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ABSTRACT

In 2002, the U.S. Department of Education established the Commission on Opportunity in Athletics to collect information, analyze issues, and obtain public input related to improving the application of current standards for measuring equal opportunity for boys and girls to participate in athletics under Title IX. The National Coalition of Woman and Girls in Education believes that: no changes to the Title IX standards are necessary; what is needed to ensure equal opportunity is vigorous federal enforcement of Title IX and its implementing policies; and a pull-back on the nation's commitment to civil rights should not be precipitated by institutional financial decisions to emphasize selected sports programs, reduce the size of men's sports programs, or otherwise determine appropriate athletic program size and expense. This report demonstrates that: female athletes are still not receiving equal treatment or opportunities to participate; Title IX has been wrongly blamed for cuts to some men's sports teams at some institutions; and women are just as interested in athletics as men. Eight responses to questions from the Commission are presented. The report examines: Title IX and its impact on athletic opportunities; trends of discontinuation of men's and women's teams, financial issues facing schools (and solutions), and other issues raised by the Commission. (Contains 27 references.) (SM)

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ED 479 906

NCWGE NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

TITLE IX ATHLETICS POLICIES

Issues and Data for Education Decision Makers

A Report from the National Coalition for Women and Girls in Education

August 27, 2002

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The National Coalition for Women and Girls in Education (NCWGE) is a nonprofit organization composed of 50 diverse organizations dedicated to improving educational opportunities for girls and women. Established in 1975, the coalition has been a major force in developing national education policies that benefit all women and girls.

NCWGE thanks the following individuals for their commitment and contributions to *Title IX Athletics Policies: Issues and Data for Education Decision Makers:*

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EXECUTIVE SUMMARY

On June 27, 2002, U.S. Department of Education Secretary Rod Paige announced the establishment of the Commission on Opportunity in Athletics (Commission) to "collect information, analyze issues, and obtain broad public input directed at improving the application of current federal standards for measuring equal opportunity for men and women, and boys and girls to participate in athletics under Title IX." By January 31, 2003, the Commission must submit a report to the Secretary outlining its findings and any recommendations for revisions to the Title IX standards.

It is the position of the National Coalition for Women and Girls in Education (NCWGE) that:

- **No changes to the Title IX standards as applied to athletics are warranted or necessary; the three-part test, including its proportionality prong, is an appropriate and necessary means to implement Title IX's requirement of equality.** Modifications to the standards that would limit future opportunities for women in favor of expanded opportunities for men would violate the goal of gender equity. Any modification to the standard that is based on the premise that women are less interested than men in sports, i.e. using the results of an interest survey to limit women's participation opportunities, would be both factually inaccurate and legally invalid.

- **What is necessary to ensure equal opportunity is vigorous federal enforcement of Title IX and its implementing policies at every level of education,** not revisions to the standards that have moved our nation toward that equality. The responsibility of the federal government is to ensure equal opportunity, not to ensure that particular sports teams are added, discontinued, or maintained.

- **A "pull-back" on the nation's commitment to civil rights should not be precipitated by institutional financial decisions to emphasize selected sports programs**, reduce the size of men's sports programs, or in other way determine the appropriate size and expense of athletics programs.

This report demonstrates the following:

- **Female athletes are not receiving equal treatment or opportunities to participate 30 years after passage of Title IX.** Although male and female participation in athletics has grown steadily, female students lag in participation opportunities, receipt of scholarships, and allocation of operating and recruitment budgets. Thus, we have not yet reached the Title IX goal of gender equity.

- **The three-part test is flexible, lawful, and reflects fundamental principles of equality.** Most educational institutions comply with Title IX's mandate to provide equal athletics participation opportunities by expanding opportunities for the underrepresented gender, or by demonstrating that they have fully accommodated the interests and abilities of the underrepresented gender. Every federal appellate court that has considered the validity of the three-part test has upheld it as constitutional and consistent with the statute. The courts have repeatedly recognized that the three-part test in no way creates quotas.

- **Title IX has been wrongly blamed by its critics for cuts to some men's sports teams at some educational institutions.** Schools choose to support, eliminate, or reduce particular sports opportunities on both men's and women's specific teams for a variety of reasons, including varying interests in specific sports, and choices about how to allocate budget resources among the sports teams the school decides to sponsor or emphasize. The number, competitive level, and quality of sports programs are individual institutional decisions, just as the number and quality of academic programs are institutional prerogatives. The government cannot dictate that particular varsity sports be added, retained, or discontinued.

- **As is proved by the increase in women's participation in athletics since 1972, given the opportunity to play, women are just as interested in athletics as men.** The remaining discrepancies in participation rates are the result of continuing discrimination in access to equal athletic opportunities. It is neither logical nor permissible to posit a lack of interest in college sports participation on the part of female athletes when fewer than 200,000 college participation opportunities exist for females and 2.7 million high school girls are participating.

Responses to Commission Questions

1. **Are Title IX standards for assessing equal opportunity in athletics working to promote opportunities for male and female athletes?**

   A: **This question is framed incorrectly. The correct question should be: "Are Title IX standards working to promote *equal* opportunity in athletics?" That is, are the standards meeting Congress' intent to remedy the lack of equal educational opportunities afforded women and girls, including in athletics programs?** The answer to this question is a qualified yes. While women's and girls' athletics opportunities have steadily increased since 1972, female student athletes continue to lag behind their male counterparts in getting their fair share of participation opportunities, scholarships, budgets, and equal treatment. The Department of Education's athletic policies, which have promoted the advances that have occurred, must be preserved and vigorously enforced.

2. **Is there adequate Title IX guidance that enables colleges and school districts to know what is expected of them and to plan for an athletic program that effectively meets the needs and interests of their students?**

   A: **Yes, there are more than adequate resources available to guide educational institutions.** The U.S. Department of Education, as the federal agency with primary responsibility for the enforcement of Title IX, has issued numerous documents over the last 30 years providing guidance on Title IX's application to athletics. In 1975, the regulations implementing Title IX were adopted after extensive congressional hearings. In 1979, the Office for Civil Rights (OCR – then HEW) issued a comprehensive athletics policy guidance document. In 1990, OCR published the Title IX Athletics Investigator's Manual which provides guidance to OCR investigators conducting Title IX investigations of athletics programs; this guidance has been made widely available to athletics administrators on the NCAA Web site. In 1996, in response to inquiries from schools, OCR issued a clarification that provides additional guidance on participation requirements. In addition to these written materials, OCR has 10 regional offices

throughout the country that are available to provide technical assistance to schools on Title IX compliance standards.

Further, national collegiate athletics governance organizations and numerous state high school associations have produced materials and workbooks that are available to their members. In addition, some conduct workshops on Title IX compliance.

3. **Is further guidance needed at the junior and senior high school levels, where the availability or absence of opportunities will critically affect the prospective interests and abilities of student athletes when they reach college age?**

   A: **No. Ample Title IX guidance currently exists, is available, and applies to all levels of education, including the junior and senior high school years.** What is needed at this level is more targeted enforcement of Title IX by the federal government, *and* for the Department of Education to collect data that would enable OCR and the public to more accurately evaluate equality of athletics opportunities and treatment. While anecdotal evidence suggests that discrimination against girls is widespread, the federal government does not collect systematic information about athletics opportunities at the junior and senior high school levels. This undermines Title IX enforcement efforts, and must be remedied.

4. **How should activities such as cheerleading and bowling factor into the analysis of equitable opportunities?**

   A: **Activities such as cheerleading and bowling factor into the analysis of Title IX compliance if such activities are considered to be bona fide sports. Standards for making this assessment are amply explained in existing Title IX guidance.** OCR does not rely on a specific definition of a sport. It instead makes case-by-case determinations based on many factors, including whether selection for the team is based on factors related primarily to athletic ability; whether the activity is sponsored for the primary purpose of preparing for and engaging in athletic competition against other similar teams; whether the team prepares for and engages in competition in the same way as other teams in the athletic program (e.g. receives coaching, conducts try-outs, engages in regular practice sessions, and has regularly scheduled athletic competitions); whether national, state, and conference championships exist for the activity; and whether the activity is administered by the athletic department. If the purpose of the activity were primarily to support and promote other athletes, then the team would not be considered to be engaged in a sport for the purpose of compliance under Title IX.

5. **How do revenue-producing and large-roster teams affect the provision of equal athletic opportunities?**

   A: **"Revenue-producing" and "profit-generating" are not equivalent terms. Many sports produce revenues, but few produce profits. Whether a team or athletic program produces revenues or profits does not remove the obligation of a school to comply with Title IX.** Rising costs in excess of increases in revenues and excessive expenditures for "revenue-producing" sports like football may limit schools' financial ability to provide equal participation opportunities for women without cutting or reducing men's lower-profile sports. But the allocation of resources among different men's sports presents budgetary issues for schools to resolve—not a reason to weaken the government's commitment to enforce the gender equity requirements of the law.

The facts are clear–few sports or total athletic programs pay for themselves, deficits are increasing, and institutions are not addressing cost-control issues. Among NCAA football programs in all competitive divisions, 78 percent spend money more than they raise, and contribute nothing to other sports budgets. Even among Division I-A football programs, more than one-third are running deficits in excess of $1 million per year. Athletic program deficits in all subsections of NCAA Divisions I and II have been steadily increasing over the past decade – from 22 percent making profits in 1993, to 15 percent in 1999, and 78 percent running deficits in 1993, to 85 percent in 1999. If schools refuse to reduce expenditures on the sports consuming most of the athletic budget and deficits remain the rule rather than the exception, athletic programs will get smaller, but they must still provide equal opportunities under Title IX.

Large-roster teams like football or crew are irrelevant considerations. The law considers the total participation opportunities afforded each gender, not the numbers or sizes of teams. If a school decides to have all of its men's or women's participation opportunities in two or three large-roster sports instead of seven or eight small-roster sports or combinations of small- and large-roster teams for each gender, this is permissible under Title IX. Title IX does not require mirror image men's and women's sports programs.

6. **The Department of Education has heard from some parties that women rarely "walk on" to intercollegiate teams, whereas some male athletes will "walk on" to intercollegiate teams without athletic financial aid and without having been recruited. Is this accurate and, what are its implications for Title IX analysis?**

   A: **A walk-on is just like any other athletics participant for the purpose of Title IX compliance. Therefore, there are no implications for Title IX analysis.** "Walk-on" is a term usually reserved for an athlete who is not a scholarship recipient, or someone who has not been recruited by the coach. Historically, because of the status and exceptional treatment of football players and other traditionally successful sports at some schools, male athletes are willing to "walk on" to such a team, because they are then accorded this same high status, prestige, and preferential treatment. Title IX does not label participants as to whether they are recruited, recipients of scholarships, or other categories. If schools are preventing men from walking on to teams, this is a reflection of budget decisions that hinder them from sponsoring additional women's participation opportunities. It is not a consequence of Title IX.

7. **In what ways do opportunities in other sports venues, such as the Olympics, professional leagues, and community recreation programs, interact with the obligations of colleges and school districts to provide equal athletic opportunity?**

   A: **The obligation of colleges and school districts receiving federal financial assistance to comply with Title IX and provide equal athletic opportunity (assuming that athletics opportunities are offered) is unrelated to any opportunities that might exist in other sports venues.** Educational institutions cannot escape their Title IX obligations by pointing to other sports programs that may be available to students. Conversely, schools cannot enhance their treatment of particular teams by pointing to the team members' professional prospects. In fact, if other venues, such as community recreation programs, receive federal funds and are considered to be

education programs or activities, such programs would also have to comply with Title IX and its implementing regulations and policies.

8. **Apart from Title IX enforcement, are there other efforts to promote athletic opportunities for male and female students that the Department might support, such as public-private partnerships to support the efforts of schools and colleges in this area?**

   A: **While there may be efforts, such as public-private partnerships, that the Department chooses to support to promote athletics opportunities, the Department has a duty and responsibility to ensure compliance with Title IX in *all* education programs or activities receiving federal financial assistance.** Thus, any efforts targeted at other institutions do not relieve schools of their obligation to comply with the law, or the Department of its obligation to enforce the law. Additionally, any new educational efforts that may be provided by federal funds must also comply with Title IX.

The report that follows examines the following issues in detail: (1) the Title IX law and its impact on athletics opportunities for women and men; (2) trends in the discontinuation of men's and women's teams; (3) financial issues facing schools and solutions; and (4) other issues raised by the Commission.

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PART I.
THE LAW AND ITS IMPACT

Since enactment of Title IX of the Education Amendments of 1972, opportunities for women and girls in sports have increased dramatically. However, contrary to critiques of the law, these gains have not come at the cost of men's athletic opportunities. In fact, the number of athletic opportunities for men has also increased. Unfortunately, though, women still have far fewer athletic opportunities than men, and spending on men's sports still dwarfs spending on women's athletics.

Note: The following data are based on numerous sources. First, they are drawn from the March 8, 2001, U.S. General Accounting Office Report (GAO-01-297)[1], Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams, examined the phenomena of adding and discontinuing sports teams. The second source is NCAA reports by Daniel L. Fulks, Ph.D., CPA, on revenues and expenses of intercollegiate athletics, the most recent data based on 1998-1999 academic year budgets. In the fall of 2002, the NCAA will release new data based on 2000-2001 academic year data. Preliminary reports on this new information indicate a continuation of the 1998-1999 trends. Lastly, the report contains data from the NCAA Participation Statistics and NCAA Gender Equity Reports. We will use data from these sources throughout this report.

1. What is Title IX of the Education of Amendments of 1972?

A: Title IX of the Education Amendments of 1972 is the federal law barring sex discrimination in all facets of education, including sports programs. Title IX prohibits any federally funded education program or activity from engaging in sex discrimination. It states:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance.
>
> – 20 U.S C. Section 1681.

2. How does Title IX apply to athletics?

A: Title IX requires that members of both sexes have equal opportunities to participate in sports and receive the benefits of competitive athletics. As a general matter, institutions do not have to offer any particular sport; neither men nor women have a right to play on particular teams. As long as a school provides equal participation opportunities to men and women overall, it has the flexibility to decide how those opportunities should be allocated among sports or teams.

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[1] A full copy of this report can be obtained at www.gao.gov. Search GAO Reports by date: March 8, 2001, and select *Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams*. The report made participation comparisons based on NAIA and NCAA data from 1981-82 to 1998-99. Athletic director survey data also compared the experience of adding and discontinuing teams from 1992-93 to 1999-00.

With respect to the benefits of competitive athletics, schools must assure that male and female athletes are treated equally throughout the athletic program, including with regard to equipment and supplies; scheduling games and practices; financial support for travel and expenses; coaching; opportunities to get tutoring, where necessary; and locker rooms, fields, and arenas, for example. Colleges and universities also must ensure that the overall share of athletic financial aid going to female athletes is about the same as the percentage of female athletes participating in the athletic program. Specifically, athletic aid for female athletes must be within 1%, or one scholarship, (whichever is greater) of females' athletic participation rate, unless there are legitimate nondiscriminatory reasons to justify a larger disparity.

3. **How does an institution show that it is offering equal participation opportunities?**

A: There are three wholly independent ways to comply with Title IX's mandate that female students be provided equal participation opportunities. Schools may show that:

- the percentage of male and female athletes is about the same as the percentage of male and female students enrolled at the school ("Prong One" or the "proportionality" prong), **OR**;

- they have a history and a continuing practice of expanding opportunities for the underrepresented sex, which is usually women ("Prong Two"), **OR**;

- they are completely and effectively accommodating the interests and abilities of female athletes (Prong Three).

If a school can meet any *one* of these tests, it will be found to be in compliance with Title IX's participation requirements. This three-part test has been in effect for more than two decades and has been upheld by every one of the eight federal appeals courts that has considered it.

4. **Does Congress support Title IX's application to athletics?**

A: YES. Congress has consistently taken steps to ensure that Title IX's mandate of equal education opportunities applies to athletics. In 1974, Congress rejected an amendment that would have exempted revenue-producing sports from Title IX coverage. Instead, Congress adopted the Javits Amendment, which affirmed the coverage of all sports and required Title IX regulations to take into account the nature of particular sports. Thus, for example, the regulations recognize that football uniforms cost more than swimsuits and do not require the same amount of money to be spent on each. In1975, Congress held extensive hearings regarding the Title IX regulations, with particular attention focused on the need to address the pervasive sex discrimination in intercollegiate athletics. Congress accepted the Title IX regulations as consistent with the Javits Amendment. And, in 1987, Congress again examined the application of Title IX to athletic programs during consideration and passage of the Civil Rights Restoration Act. During this debate, many members of Congress cited Title IX's coverage of athletics with approval.

5. **What is the federal government's role in enforcing Title IX?**

A: The fundamental role of the federal government is to vigorously enforce Title IX and its implementing regulations and policies to promote equality of opportunity -- not to protect the rights of a few to play particular sports. The Department of Education's Office for Civil Rights (OCR) is the primary agency charged with making Title IX's mandate a reality. OCR has the power to withhold federal funding from a school that refuses to comply with the law, although OCR has never used this powerful tool. Thus, it is not revisions to the standards that have moved us toward equal opportunities by rather the vigorous enforcement of Title IX and its implementing policies that ensures equal opportunities at every level of education. This important principle must be reaffirmed by the Commission.

6. **Why is the three-part test an appropriate and necessary means to implement Title IX's command of equality?**

A: **It would violate Title IX, and common sense, to eliminate Prong One as an acceptable way for schools to comply.** Schools must be permitted to provide proportional opportunities to their male and female students. To prohibit schools from using Prong One as a way to comply with Title IX would not only reduce schools' options, but also would be to accept the stereotyped notion that women are never as interested as men in playing sports. This argument has been repeatedly rejected by courts that hold that gender-based stereotypes used to justify limits on women's opportunities are illegal.

Prong Two provides more flexibility than other civil rights standards; under Prong Two, schools need not actually provide equal opportunity, but may show simply that they have made, and are still making, progress toward equality. Imagine an employer claiming it is complying with equal pay for women because the employer is simply making progress in steadily raising women's pay towards equality with their male counterparts.

Prong Three enables schools that fall short of proportionality to show instead that they are fully meeting the actual interests of women on their campuses. Prong Three allows for a school to show that it is accommodating the interests of its women students to participate in athletics, even though the school is not giving them the same opportunity to play as to male students.

The three-part test guards against freezing discrimination into place. Despite Title IX's considerable successes, there is still substantial discrimination against women. Although women in Division I colleges and universities make up 53% of the student body, they receive only 41% of the participation opportunities; 43% of the athletic scholarship dollars; 36% of athletic operating budgets; and 32% of recruiting dollars. There is also widespread discrimination against female athletes at the high school level. As courts have recognized, if schools are not allowed to comply with Title IX by offering proportional participation opportunities, women's opportunities will be frozen at current levels. The three-part test and its proportionality prong are necessary to ensure that schools will not restrict women's participation in athletics by unfairly limiting their opportunities.

7. Does the three-part test establish quotas?

A: NO. The three-part test imposes no numerical requirement even remotely analogous to quotas. Athletic teams are already gender-segregated, and individual educational institutions decide how many athletic opportunities they will allocate to each sex. Thus, schools make a gender conscious allocation of opportunities. Far from imposing quotas, the three-part test is merely a means of determining whether schools distribute sex-segregated athletic participation opportunities fairly. Courts have repeatedly recognized that the three-part test in no way creates quotas.

8. Is it true that schools have been forced to use Prong One, the "proportionality" prong?

A: NO. Operation of the three-part test in practice has underscored the vitality of each of the three prongs and disproves any claim that schools are only able to comply under prong one. From 1994 through 1998, for example, the Office for Civil Rights at the U.S. Department of Education reviewed 74 cases that involved Title IX's participation requirements. Of these, only 21 – or fewer than one-third – were held in compliance under Prong One; the rest of the schools were found in compliance under Prongs Two or Three.

Prong Three was used by institutions most frequently:

Prong One	28% (21 institutions)	Substantial proportionality
Prong Two	5% (4 institutions)	History and continuing program expansion
Prong Three	66% (49 institutions)	Full and effective accommodation of interests and abilities[2]

9. Does the use of the term "safe harbor" by OCR force educational institutions to use Prong One in order to be certain they are not subject to lawsuits? Does this mean that Prongs Two and Three are "unsafe"?

A: NO. A "safe harbor" provision means that if the provision's standards are satisfied, no other inquiry is necessary. Calling the proportionality test in Prong One a "safe harbor" does not mean that it is the only safe or acceptable method of compliance with Title IX or that Prongs Two and Three are harder or more rigorous standards. Rather, it means that those prongs require additional inquiry that goes beyond the immediate assessment schools can utilize under Prong One.

10. Have courts upheld the three-part test?

A: YES. Every federal appellate court to consider the validity of the three-part test has upheld it as constitutional and consistent with the statute.

11. Was the "three part test" published in the Federal Register?

A: YES. The three-part test was published in the Federal Register in 1979. The clarification issued by the Department of Education in 1996 was not required to be published in the Federal Register. Were the Department to adopt any modifications to

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[2] United States General Accounting Office ("GAO"), No. 01-128 Gender Equity: Men's and Women's Participation in Higher Education, December 2000, at 40.

the three-part test or its 1996 Clarification, these modifications *would* need to be published in the Federal Register.

12. Has Title IX helped to increase athletics opportunities for women and girls?

A. YES. See tables 1, 2 and 3.[3]

13. Has men's participation in athletics decreased since enactment of Title IX?

A. NO. See tables 1, 2 and 3.

14. Have women achieved equity in participation rates to men's sports?

A. NO. See tables 1, 2 and 3.

TABLE 1
CHANGES IN INTERCOLLEGIATE PARTICIPATION BY GENDER - 1981-1999

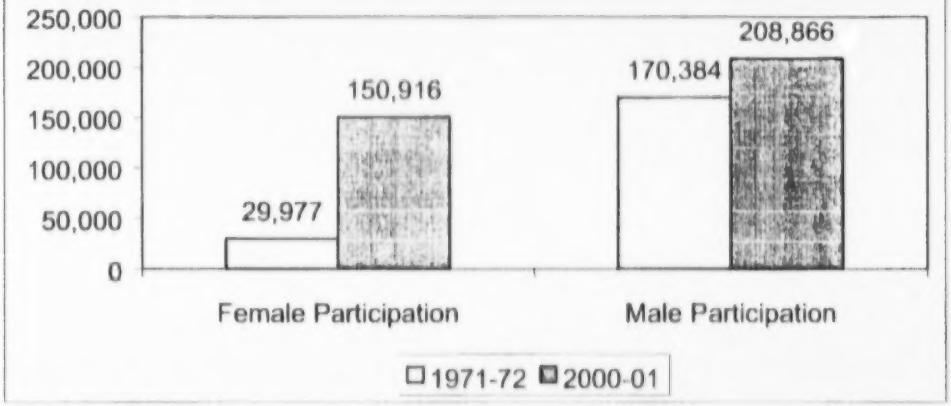
	1981-82	1998-99	Change in Number of Participants	Percentage change
Female	90,100	162,783	+72,683	81%
Male	220,178	231,866	+11,688	5%

-GAO Report- *Four-Year Colleges' Experiences Adding and Discontinuing Teams, 2001*

NCAA participation data was available for 1971-72. Table 2 shows that 2000-01 NCAA female participation still remains below men's pre-Title IX 1971-72 participation levels.

[3] Table I data include participation figures obtained from both NCAA and NAIA institutions, rather than association participation data, thereby eliminating the factors of participation growth as a function of membership transfers between these organizations and duplicate counting due to dual association memberships. Only National Federation of State High School Associations (NFSHSA) high school participation and National Collegiate Athletic Association (NCAA) college participation data is available from 1971-72. National Association for Intercollegiate Athletics (NAIA) data is only available from 1981-82.

TABLE 2
NCAA Female Participation in Intercollegiate Sports
Remains Below Pre-Title IX NCAA Male Participation



-NCAA Participation Statistics, 2001

At the high school level, the growth of female participation has also been significant. However, female participation in high school is 1.1 million opportunities below male participation levels. See Table 3.

TABLE 3
Female High School (NFSHSA) and Collegiate (NCAA) Participation

	Year	1971-1972	2000-2001	Percent Increase
High School Varsity Athletes	Female	294,015	2,784,154	847 percent
	Male	3,666,917	3,921,069	6.9 percent
Collegiate Varsity Athletes	Female	29,977	150,916	411 percent
	Male	170,384	208,866	36.1 percent

-NCAA Participation Statistics and the National Federation of State High School Associations in 2000

15. Are women less interested in athletics than men?

A: The immediate and dramatic increase in girls' and women's participation in sport after Title IX was passed clearly demonstrates that it was lack of opportunity – not lack of interest – that kept them out of high school and college athletics for so many years. Before Title IX, women were told that they were not as interested in math, science, or becoming doctors as men were. And, again, given equal opportunities to pursue interests, women thrive in all areas. The remaining discrepancies in participation rates are the result of continuing discrimination in access to athletic opportunities. Further,

Title IX was established to counter and prohibits utilization of such unfounded stereotypes.

16. Should surveys be used to show that women are less interested in sports than men?

A: NO. Because women's athletics opportunities have historically been limited – and continue to be – surveys generally cannot capture the interest that would be demonstrated were non-discriminatory opportunities to be made available. As the U.S. Court of Appeals for the First Circuit in *Cohen v. Brown University* clearly stated:

> "Brown's argument that women are less interested than men in participating in intercollegiate athletics, as well as its conclusion that institutions should be required to accommodate the interests and abilities of its female students only to the extent that it accommodates the interests and abilities of its male students, is viewed with suspicion. To assert that Title IX permits institutions to provide fewer athletics participation opportunities for women than for men, based on the premise that women are less interested in sports than are men, is (among other things) to ignore the fact that Title IX was enacted in order to remedy discrimination that results from stereotyped notions of women's athletics and abilities...Interests and abilities rarely develop in a vacuum; they evolve as a function of opportunity and experience...Women's lower rate of participation in athletics reflects women's historical lack of opportunities to participate in sports...Moreover the Supreme Court has repeatedly condemned gender-based discrimination based upon archaic and overbroad generalizations about women."

Additionally, it is not logical to posit a lack of interest in college sport participation on the part of female athletes when far fewer than 200,000 participation opportunities exist and 2.7 million high school girls are participating. The fact is that college and university athletic programs cannot begin to meet the needs and interests of male *or* female athletes. The issue is whether the college or university provides equal opportunity to participate given these limitations and equal treatment within its existing athletic program.

Finally, experts in the use of survey instruments have condemned the use of surveys of interest -- which measure attitude -- as a way to predict behavior. Whereas men may be more likely than women to profess an interest in sport, women's lack of expressed interest -- given their historic and current exclusion from a fair share of participation opportunities -- cannot be used to predict their actual levels of participation when non-discriminatory opportunities are made available. To use the results of interest surveys as a justification for withholding participation opportunities would be an improper use of such methodology.[4]

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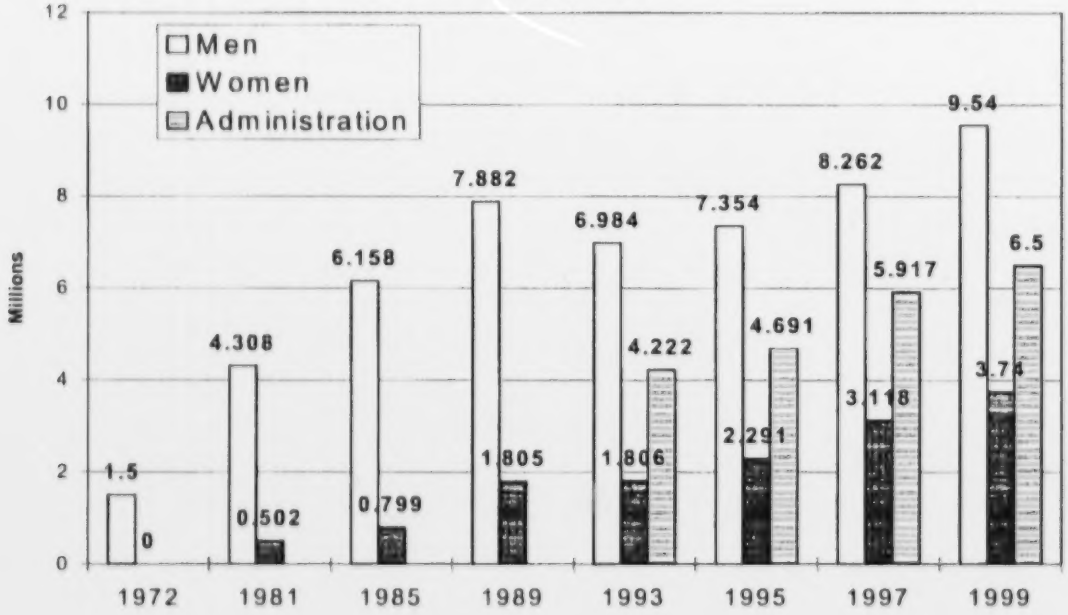
[4] This point has been made by, for example, Donald Sabo, Ph.D., Professor of Sociology, D'Youville College, Director of the Center for Research on Physical Activity, Sport & Health. Former President, North American Society for the Sociology of Sport. Professor Sabo was an expert witness on research methodology for the Cohen v. Brown University case, and has extensively analyzed the methodological problems with such surveys.

17. What is the current status of expenditures on men's and women's athletic programs?

A: Table 4 shows that in 1972 in Division I-A, approximately $1.5 million was spent on average per institution on men with no reported expenditures on women's sports. Between 1972 and 1993, **for every new dollar spent on women's athletics, three additional dollars were added to the men's programs**. In general, there appears to have been little discipline in exercising control over the growth of men's program budgets while schools worked to achieve Title IX compliance.

In 1993, there was a change in the collection of data in order to attempt to identify administrative costs. These administrative costs are not fully detailed in the Fulks study but would include such "non-gender" items as academic support centers or training facilities used by both genders. However, while the expenses for men's programs were significantly reduced by this new approach, the expenses for women's programs remained almost the same. Moreover, athletic program administrative costs are almost double the total allocation for women's sports operating budgets. **Even setting aside administrative costs and assuming they are accurate and gender-neutral, a comparison of the financial allocations to men's and women's athletics programs since 1993 shows that significant disparities continue to exist.**

TABLE 4
Total Expenses In Men's and Women's Athletic Programs
Division I-A



Note: Nongender-specific items were reported as Administrative Expenses

Fulks, Revenues and Expenses of Intercollegiate Athletics, 1993 & 1999

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Further, the results of the 2000 NCAA Gender Equity Study show that the allocation of participation slots and dollars for women in Division I-A is still far from equitable (see Table 5). Although women in Division I colleges comprise 53% of the student body, they receive only 41% of the participation opportunities, 43% of athletics scholarship dollars, 36% of athletic operating budgets, and 32% of the dollars spent to recruit new athletes.

TABLE 5

2000 Gender-Equity Survey Results
Division I Results

	Male	Female
Participation	59%	41%
Athletic Scholarships	57%	43%
Operating Budget	64%	36%
Recruiting Budget	68%	32%

--NCAA, Gender Equity Survey, 2000

18. What is the current status of expenditures on men's and women's athletics scholarships?

A: Male athletes receive $133 million, or 36 percent more, than female athletes in college athletic scholarships each year at NCAA member institutions.[5]

19. Has Title IX had an adverse impact on the participation of ethnic and racial minority athletes?

A: There are no data on the participation of athletes by race or ethnicity that have been collected since Title IX's enactment in 1972. No such data are currently collected at the high school level. At the college level, the NCAA has only recently started collecting such data.

However it can be assumed that Title IX has helped women of color to the extent that they have sports participation opportunities and scholarships not previously offered to female athletes. Prior to Title IX, there were few scholarships and limited support given to any women's sport. Title IX has assisted all women, white and of color.

Where there may be a gap between minority participation in particular sports and the representation of that minority in the relevant segment of the population, schools must investigate and eliminate discriminatory barriers that exist and may, as consistent with the law, make efforts to increase the levels of participation. This is not, however, an issue that implicates Title IX.

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[5] NCAA 1999-2000 Gender Equity Report:. DI Men: 1,411,400* 295 institutions = 416,363,000
DI Women: 1,055,500*295 = 311,372,500 DII Men: 392,100* 228 = 89,398,800
DII Women 268,000 * 61,104,000
Men's Total DI and DII-=505,761,800 Women's Total DI and DII- =372,476,500
Difference = $133,285,300 = 36%

PART II.
TRENDS IN THE DISCONTINUATION OF MEN'S AND WOMEN'S SPORTS

Neither Title IX nor its policies, and particularly the three-part test, explicitly or in practice require the discontinuation of men's teams. Title IX requires that members of both sexes have equal opportunities to participate in sports and receive the benefits of competitive athletics. As a general matter, institutions do not have to offer any particular sport; neither men nor women have a right to play on particular teams. As long as a school provides *equal* participation opportunities to men and women overall, it has the flexibility to decide how those opportunities should be allocated among sports or teams.

Answers to Questions 21 through 27 below come from the 2001 GAO Report.

20. What was the net outcome with regard to total number of <u>teams</u> added and discontinued over what time period?

A: Both the total of male and female teams increased from 1981-82 to 1998-99 as follows:

TABLE 6

NET OUTCOME OF ADDED AND DISCONTINUED TEAMS

	1981-82	1998-99	Change in Number of Teams	Percentage change
Female	5,695	9,479	+3,784	66%
Male[6]	9,113	9,149	+ 36	.4%

-GAO Report- *Four-Year Colleges' Experiences Adding and Discontinuing Teams, 2001*

21. How did the experience of adding and discontinuing teams vary overall?

A. Overall, 80% (948 of 1,191) of institutions added one or more women's sports teams during the 1992-93 to 1999-2000 period, and 72% of those did so without discontinuing any teams; 33% (391 of 1,191) of institutions added both men's and women's intercollegiate teams; and 1% (15 institutions) added only men's teams.

22. What types of schools dropped teams versus added teams?

A. The institutions with the most competitive athletic programs (determined by competitiveness of division) and largest athletic budgets were more likely to discontinue men's teams, while the less competitive institutions with the smallest budgets were more likely to add men's teams.

[6] Data include both NCAA and NAIA institutions, thereby eliminating double counting schools with dual NAIA and NCAA memberships.

TABLE 7
Addition and Discontinuation of Men's Teams

	Division I	Division II	Division III	NAIA
% of Schools That Added Men's Teams	15%	32%	39%	54%
% of Schools That Discontinued Men's Teams	30%	27%	18%	19%

-GAO Report- *Four-Year Colleges' Experiences Adding and Discontinuing Teams, 2001*

23. Did any women's sports lose participants?

A: Yes women's sports also reported losses. For example, there were decreases in gymnastics (-683), field hockey (-229), and fencing (-171) between 1981-82 and 1998-99.

24. If wrestling lost participants while men's participation numbers increased on the whole, which male sports gained athletes?

A: The greatest participation increases were in the sports of football and baseball. Between 1981-82 and 1998-99, football's participation increase of 7,199 more than offset wrestling's loss of 2,648 participants, outdoor track's loss of 1,706 participants, tennis's loss of 1,405 participants, and gymnastics' loss of 1,022 participants. Other sports that gained participants include baseball (+5,452), lacrosse (+2,000), and soccer (+1,932).

25. Was the large increase in football participation a function of schools adding more football teams?

A: NO. The number of football teams decreased from 705 to 668 (a difference of 37 teams) over the 1981-82 through 1998-99 period. Football participation, on the other hand, increased by 7,199 participants: from 52,213 to 60,412 during that period. The net result is fewer teams with more participants. According to the NCAA Participation Statistics Report, in 1981-82 football teams averaged 82 players, while in 1999-00 football teams averaged 94 players.

26. What was the impact of adding and discontinuing sports on athletic program expenditures?

A. According to the 2001 GAO report, in general, adding an intercollegiate team increased expenditures by 6% while discontinuing a team reduced expenditures by 4%, with schools with larger athletic programs experiencing smaller percentages. Expenditures varied based on sport. When schools added football, the total athletic expenditures increased by an average of 31%, but when schools decided to discontinue wrestling, the expenditure budget decreased by only 2%. When schools decided to cut men's tennis, men's golf, or men's outdoor track, they also only saved 2% of their total expenditures for each sport.

27. How do we know that Title IX was not the cause of the elimination of men's sports?

A: The declines or changes in student interest are supported by looking at the sports in which teams were added contrasted with sports in which teams were discontinued:

TABLE 8
Examples of Added and Discontinued Teams In Selected Sports

Men's Teams Discontinued		Women's Teams Discontinued	
Wrestling	- 171	Gymnastics	- 100
Tennis	- 84	Fencing	- 31
Gymnastics	- 56	Field Hockey	- 28
Men's Teams Added		**Women's Teams Added**	
Soccer	+135	Soccer	+846
Baseball	+ 85	Cross-Country	+516
Basketball	+ 82	Softball	+432

- GAO Report- Four-Year Colleges' Experiences Adding and Discontinuing Teams, 2001[7]

Any claim that the decline in men's wrestling teams is due to Title IX's policies is particularly unfounded. During the period from 1984-1988, Title IX's application to intercollegiate athletics was suspended due to the Supreme Court's decision in *Grove City College v. Bell*, which held that only parts of schools directly receiving earmarked federal funds (which intercollegiate athletics do not) were covered by Title IX. **In that four-year period, when the three-part test was not in effect, colleges and universities cut wrestling teams at a rate almost three times as high as the rate of decline during the 12 years after Title IX's application to intercollegiate athletic programs was firmly reestablished through the Civil Rights Restoration Act of 1987.** From 1984 to 1988, the number of NCAA institutions sponsoring men's wrestling teams dropped by 53, from 342 to 289. During the 12 years from 1988 to 2000, the number dropped by 55, from 289 to 234. Men's overall participation also dropped during the years that Title IX was not being enforced, declining from 201,063 in 1984-85 to 178,941 in 1987-88.

Declining interest in wrestling is also manifested by high school trends. High school wrestling participation peaked in 1976-77 at 355,160. By 1981-82, it declined to 245,029 and by 1998-99 to 235,973.[8]

In gymnastics, most athletic administrators would agree that the most likely reason for the elimination of teams is liability. The significant loss of women's gymnastics teams over the same time period supports this contention (see Table 6). More women's gymnastics teams were discontinued than men's gymnastics teams, see Table 9. Certainly no one would consider blaming Title IX for the loss of so many women's teams.

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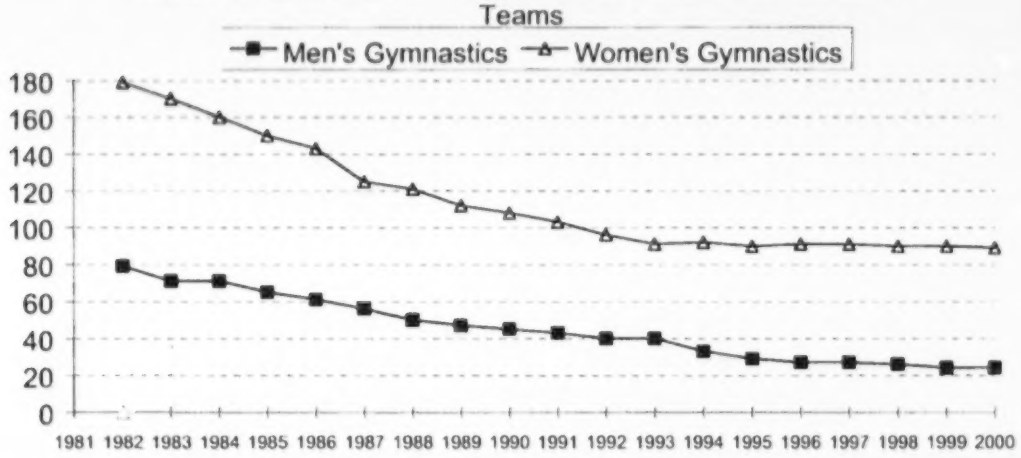
[7] Represents sports with highest frequencies of being added and discontinued during the 1981-1982 and 1998-1999 period.

[8] These data were supplied by the National Federation of State High School Associations.

TABLE 9

NCAA Men's and Women's Gymnastics - Decline in Number of Teams



--NCAA 1982-2000 Participation Statistics Report

In addition, over the last 20 years, student-athletes are being encouraged to specialize in one sport rather than compete in multiple sports thereby reducing the number of athletes who previously had been counted as participants in each sport.

28. Why are some higher education institutions blaming equal opportunity laws for budgetary decisions?

A: Schools are unable to find new sources of revenue while others are unwilling to cut expenses unilaterally because of the "arms race" to apply more resources to football and men's basketball. Moreover, blaming Title IX may be an effort to simplify complex decisions that can be based on numerous factors, including declining interest in specific sports; liability considerations; the poor performance of specific teams; the absence of competitors within a school's conference or region; and choices about how to allocate budget revenues among the sports teams the school wishes to sponsor.

PART III.
FINANCIAL ISSUES FACING SCHOOLS AND POSSIBLE SOLUTIONS

As has been noted, schools choose to eliminate teams for numerous reasons. However, financial choices play a significant role in decisions about whether to add, maintain, or discontinue teams. This section will discuss the financial issues facing schools, the financial choices schools make, and some possible solutions to these problems.

29. Why is it important to address financial solutions?

A. Fiscally responsible athletic programs are essential predicates for public confidence in higher education. A "pull-back" on the nation's commitment to civil rights cannot be precipitated by institutional decisions to emphasize one sport program, reduce the size of men's sports programs or in other ways determine the appropriate size and expense of athletics programs. Higher education should not expect the federal government to weaken its commitment to gender equity, an important civil rights law, in response to higher education's inability to control expenditures. Higher education must address budgetary issues and excesses in intercollegiate athletics.

30. Are collegiate athletic programs self-supporting?

A: NO. The latest results from the NCAA quadrennial analysis of revenues and expenses in intercollegiate athletics[9] ("Fulks") (see Table 10 & 11) show that 54% (56) of Division I-A programs are in deficit spending. The average annual deficit for those in the red is now $3.3 million, which is up from $2.8 million in 1997.

TABLE 10
1999 DIVISIONS I & II PROFITS/DEFICITS
Excluding Institutional Support

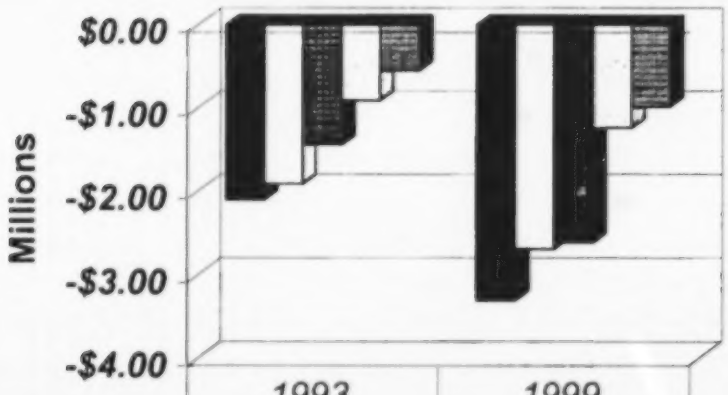
	Profit			Deficit		
Division	Number	%	Amount	Number	%	Amount
I-A	48	46%	$3.8m	56	54%	($3.3m)
I-AA	13	14%	$590,000	82	86%	($2.7m)
I-AAA	4	5%	$230,000	72	95%	($2.6m)
II w/FB	8	6%	$130,000	119	94%	($1.2m)
II w/o FB	4	4%	$250,000	91	96%	($980,000)
Total	77	15%		420	85%	

-- Fulks, *Revenues and Expenses of Intercollegiate Athletics*, 1999

[9] Daniel L. Fulks, Ph.D., CPA, *Revenues and Expenses of Divisions I and II Intercollegiate Athletics Programs—Financial Trends and Relationships—1999*, Michael V. Earle ed., (2000).

These deficits in all subsections of Divisions I and II have been steadily increasing over the past decade – from 22% making profits in 1993 to 15% in 1999 and 78% running deficits in 1993 to 85% in 1999.[10] Expenses have increased more quickly than have revenues, and the average deficit has also increased. Table 11 illustrates the growing deficits:

TABLE 11
Growing Deficits in Athletic Programs,
Excluding Institutional Support



	1993	1999
I-A	-$2.10	-$3.30
I-AA	-$1.91	-$2.69
I-AAA	-$1.44	-$2.61
II with FB	-$0.91	-$1.24
II w/o FB	-$0.55	-$0.98

Fulks, *Revenues and Expenses of Intercollegiate Athletics*, 1993 & 1999

On July 17, in the NCAA Presidential Update, NCAA Executive Director Ced Dempsey noted that the fall 2002 update of the Fulks' Report will show that in Division I-A the number of programs that have brought in more revenues than expenditures (excluding institutional support) had dropped from 48 to 40 in the last two years. While Dempsey reported that the average profit for these Division I-A programs has increased from $3.8 million in 1999 to $5 million in 2001, the average deficit for other institutions in Division I-A increased from $3.3 million to $3.8 million. The disparity between the "haves" and the "have-nots" is increasing.

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[10] Daniel L. Fulks, Ph.D., CPA, *Revenues and Expenses of Divisions I and II Intercollegiate Athletics Programs—Financial Trends and Relationships—1993* (1994).

31. Are football and men's basketball programs self-supporting?

A: NO. "Revenue-producing" and "profit-generating" are not equivalent terms. Many sports produce revenues, but few produce profits. Among NCAA programs in all competitive divisions, 78% of all football programs and 73% of all basketball programs spend more than they bring in and contribute nothing to other sport budgets.[11] Even among Division I-A football programs, more than a third are running deficits in excess of $1 million per year.

32. What is the extent to which institutions are "subsidizing" their athletic programs?

A: In 1999, Division I-A public schools received an average of $1,541,000 in institutional support, while private schools received an average of $4,329,000.[12] Some institutions receive student activity fees in addition to institutional support. For example, according to the Fulks' Report, in Division I-A public institutions, the average contribution to athletics programs from student activity fees was $1.4 million.

Examples:

- In a speech to the National Press Club on January 21, 2001, University of Indiana President Myles Brand stated, "Yet, despite increased revenue, athletic departments tend to overreach; the vast majority of Division I-A athletic programs cannot balance their budgets without university subventions. These subsidies are sometimes overt, but mostly they are buried in the [university] operating budget, for example in support for physical plant and debt service."

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[11] Daniel L. Fulks, Ph.D., CPA, *Revenues and Expenses of Divisions I and II Intercollegiate Athletics Programs—Financial Trends and Relationships—1999* with data extrapolated to avoid averaging averages; taking Fulks computation of % reporting defits applied to total number of FB and BB programs in that division. Since no profit-making programs were reported in DIII, assumption was made that 100% of DIII football programs and 90% of DIII basketball programs produced deficits.

Computation of % of Football Programs with Deficit Budgets:

Division	Fulks % w/ Deficit	Total Programs	Number Programs w/ Deficits
IA	36%	114	41
IAA	81%	117	95
II	74%	148	148
III	100%	219	219
	TOTAL	598	465

465/598 = 78% of all NCAA FB programs run deficits

Computation of % of Basketball Programs with Deficit Budgets:

Division	Fulks % w/ Deficit	Total Programs	Number Programs w/ Deficits
IA	29%	111	32
IAA	68%	119	81
IAAA	63%	80	50
II w/ FB	74%	144	107
II wo/FB	77%	110	85
III w/FB	90%	196	176
III wo/FB	90%	156	140
	TOTAL	916	672

672/916 = 73% of all NCAA BB programs run deficits

[12] Fulks, Daniel L., Ph.D., CPA, *Revenues and Expenses of Divisions I and II Intercollegiate Athletics Programs—Financial Trends and Relationships—1999*, Michael V. Earle ed., (2000).

- The *Minnesota Star-Tribune*, January 27, 2002, reported that, "Michigan [football team] led the nation in attendance for three consecutive years, but without institutional support, has barely stayed in the black."

- The *Journal of Higher Education*[13] reported, "In October 1997, the athletic director of the University of Illinois requested an increase of $68 per student to cover an athletic program deficit. Primary source of the shortfall was that attendance at varsity football games was down, reducing income by $2.0 million for that sport – and leaving $1.2 million shortfall for the entire intercollegiate athletic program." Further, the same publication reported, "The National Association of College and University Business Officers reviewed existing research and concluded: 'The implications are troublesome. That is, if the educational budgets of colleges and universities are covering intercollegiate athletic program deficits, then the academic program suffers – and the academic program is the principle function of colleges and universities.'"

- The *Union-Tribune*, November 11, 2001, questioned the San Diego State University (SDSU) athletic department cumulative debt of $1.0 million despite questionable program expenditures such as $4,383 for helmet decals, $40,720 for 600 pairs of Nikes, and $37,796 for hotel rooms and buses on nights before home football games. The 2001-02 SDSU athletic budget is $17.9 million -- $6.4 million (or 36%) of which comes from the university's general fund. Faced with a 2000-2001 deficit, the athletic director cut the men's volleyball program for a savings of $134,000 rather than reduce the $5 million football budget ($1 million more than 12-sport women's program budget) by this amount.

Similar situations have arisen for colleges and universities involving institutional general fund subsidies:[14]

- Van De Velde (Iowa State Athletic Director) said, "Oklahoma athletics had an operating deficit of $12 million. And at Kansas State they ran up a multi-million-dollar deficit ... then took that debt and folded it into a bond issue. Now they're servicing a bond issue for operating debt. We weren't going to do that."

- "Iowa State, coming off perhaps the most successful sports year in its history, cut these two programs (baseball and men's swimming) last month because its athletic department faced a $1.4 million deficit. Blame came quickly, much of it directed at the recently negotiated contracts for the school's football and basketball coaches. Football Coach Dan McCarney's compensation was doubled to $600,000, while [basketball coach] Larry Eustachy's annual package rose to $1.1 million (from approximately $500,000), even though the basketball coach had nine years left on a 10-year deal."

- Texas spent $44 million on a 20-sport program last year. Iowa State also fielded 20 teams before the cutbacks on a budget of $20 million.

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[13] Thelin, J. R., "Good Sports? Historical Perspectives on the Political Economy of Intercollegiate Athletics in the Era of Title IX 1972-1997", Journal of Higher Education, Vol. 71, No. 4 (July-August 2000), p. 401-402.

[14] Fitzpatrick, F., 'College Sports' Ill Wind Hits Cyclones', Knight Ridder Newspapers, Monday, May 14, 2001

- "Iowa State has been loudly criticized by legislators such as Fallon. The money that went into raises for Eustachy and McCarney, they argue, could have saved baseball and swimming....About 12% of the athletic department income came from the university's general fund."

33. Are there financial data to support the existence of a Division I "arms race"[15] that may influence the ability of educational institutions to comply with Title IX and maintain men's and women's participation rates?

A: YES. Myles Brand, President of Indiana University, explained in a January 21, 2001, speech, *Academics First: Reforming Intercollegiate Athletics*, to the National Press Club, "In pursuit of even more entertainment dollars, many universities have launched an "arms race" in the building of new settings for these dramas. They replace adequate, if aging, sports facilities, with stadiums and arenas matching the best that pro franchises have to offer. Coaches' and athletic directors' salaries rise rapidly, with many exceeding seven figures. Little expense is spared in training aids, such as video equipment and workout rooms, and there are increased ancillary personnel, including media and marketing people. The number of Division I-A athletic departments with expenditure budgets exceeding $50 million annually is increasing."

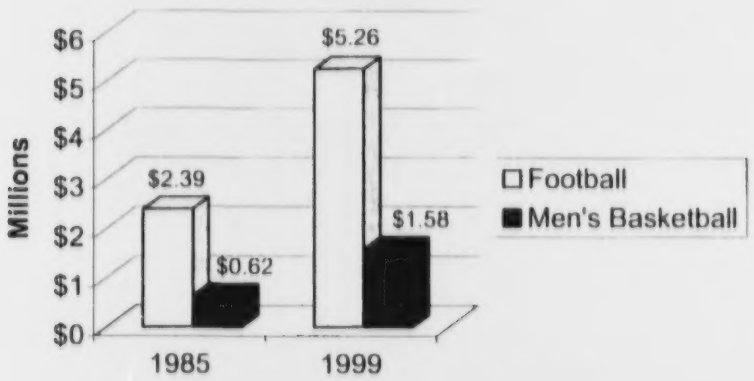
a. Operating Budgets

Fulks documents the increasing costs in football and men's basketball between 1985 and 1999 (see Table 12). In that time frame, average football expenditures in Division I-A more than doubled while men's basketball budgets grew two and one half times larger.[16]

[15] The "arms race" is a term amply used through the report of the Commission On Intercollegiate Athletics, *A Call to Action: Reconnecting College Sports and Higher Education*, Knight Foundation, June 2001. Further, throughout this section, newspaper reports are amply quoted to demonstrate that an arms race exists. Oftentimes, association surveys and reports limit reporting of data (i.e., base salary rather than total salary, no requirement for audited year end financials from all accounts, no reports of contract period or financial incentives for completing contract period, housing allowances, etc.) and thus understate expenditures and liabilities.

[16] However, it should be pointed out that in 1993 there was a change in the reporting form in order to more accurately determine the true costs of specific sports. Thus, "Unrelated Expenses" were decreased and sports budgets increased. Some of the increases in football and men's basketball may be due to this factor.

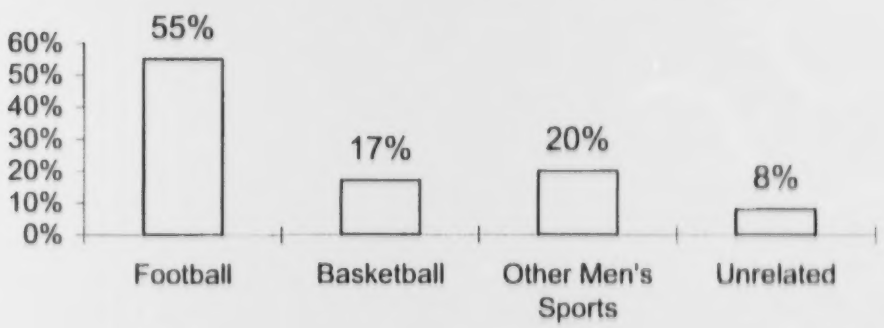
TABLE 12
Average Budget for Football and Men's Basketball
Division I-A



Fulks, *Revenues and Expenses of Intercollegiate Athletics*, 1999

An analysis of the allocations to men's sports reveals interesting results. The data presented in Table 16 reflect the disparate treatment afforded men's minor sports (Fulks).

TABLE 13
1999 Average NCAA Division 1-A Men's Programs Expenses



Fulks, *Revenues and Expenses of Intercollegiate Athletics*, 1999

Football, which on average carries 117.3 student-athletes in Division I-A, spends just less than half a percentage point on each student-athlete. In the sport of men's basketball, which services generally 15 student-athletes, more than 1% of the entire men's athletic budget is spent on each male student-athlete (Fulks). Together these

two sports consume 72% of the men's budget.[17] All of the other men's sports together (minor sports) receive only 20% of the entire budget. Put another way, 17% of the entire men's budget is spent on 15 student-athletes; 20% is the total budget for ALL of the other six men's minor sport teams that exist on average in Division I-A universities.[18]

b. Debt Service and Capital Expenditures

A costly trend in Division I athletic programs is the "arms race" to build new and luxurious facilities with which to entice blue-chip student-athletes in order to increase the odds of fielding winning teams. The Knight Commission reported that capital expenditures tied to sports at Division I-A institutions increased 250% in seven years. Even though only 15% of Division I and II intercollegiate athletic programs operate in the black, the Knight report said, more than $4.0 billion is being poured into athletic facilities nationwide, with the resulting debt stretching far into the future.[19]

Examples:

- Marquette University, an institution that does not sponsor a football program, dropped its wrestling program following the 2000-01 season. In 2000, Marquette received a donation of $7 million and has since announced a $31 million capital campaign to build a basketball arena, in an effort to return its basketball program to national prominence. (*NABC.com*, May 1, 2002)

- "Clemson is in the midst of a $70 million to $80 million capital campaign that started in 1999 and is scheduled to end in the summer of 2004." (*Idaho Statesman*, Friday, December 21, 2001)

- "An announcement is expected soon on ground breaking in the $40 million plan to upgrade the athletic facilities at the University of Alabama. Among the improvements on the drawing board include the expansion of the football complex (with a new weight room) and a renovation of Bryant Hall as a state of the art academic center." (*Huntsville Times*, January 7, 2002)

- "The Longhorns football team might be practicing in air-conditioned comfort by next fall if the University of Texas goes ahead with plans to build a $4.0 million domed field." (*Austin American-Statesman*, Wednesday, January 9, 2002)

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[17] Not included in sport operating budgets are the significant amounts of money allocated to football and men's basketball in such areas as marketing, promotions and sports information offices. In most Division I athletics programs the bulk of these resources are targeted to these sports so the real costs of these two programs are unknown at the current time. However, in the Fulks study, these costs are not allocated to sport budgets. Rather, they are shown as non-sport designated expenditures.

[18] The average participation numbers in six men's sports at an institution in Division I-A are as follows: Lacrosse (39), Indoor Track & Field (36), Outdoor Track & Field (36), Baseball (33), Wrestling (30) and Ice Hockey (28). Thus, there is only 20% of the men's budget allocated to service a total of 202 student-athletes in these sports while 17% of the budget services 15 student-athletes.

[19] Commission On Intercollegiate Athletics, *A Call to Action: Reconnecting College Sports and Higher Education*, Knight Foundation, June 2001.

- "You can already hear the conversation the next time Texas recruits a player also sought by Arizona's John Mackovic or ASU's Dirk Koetter – "If you go to Arizona, a Texas coach will say, 'You will spend months practicing outdoors when it is 100 degrees. Play for us, and it will be 72.'" (*Arizona Daily Star*, January 2002)

- "Since 1997, the University (of Minnesota) has spent more than $49 million on athletic facilities, including almost $7.7 million on football facilities." "The University's five-year investment of $7.7 million in football facilities, about 60% of it paid for by donors, pales in comparison to schools such as Ohio State, which reportedly spent nearly $200 million to renovate its football stadium. Penn State wants to raise $20 million in private funds for athletic facilities, and Purdue and Wisconsin are planning stadium renovations." (*Minnesota Star-Tribune*, February 13, 2002)

- "With campus buildings in the distance, a 33-foot deep gouge in the earth is the dominant feature at the site of the Save Mart Center at California State University, Fresno, as footings were installed in January. Paying off the $74,475,000 in bonds that a Fresno State Auxiliary is selling to build a new home court for the Bulldog basketball teams will require between $5 million and $5.5 million per year for most of the Center's first decade. As much as $7.8 million will be needed in later years." (*The Fresno Bee*, May 19, 2002)

- "The Oklahoma football team will have a new indoor field before year's end ... Regents approved a contract up to $8.2 million to a Manhattan construction company for an indoor turf field to be completed in November." (*The Oklahoman*, January 31, 2002)

- "The Ducks (University of Oregon) made it to the Rose Bowl in 1995 as champion of the Pacific 10 Conference, and in 1998 Oregon spent $15 million to build the first indoor football practice complex on the west coast." (*New York Times*, Saturday, October 20, 2001)

- "Furthermore, investments in new facilities intended to generate revenues often fail to meet promises or expectations. The most conspicuous is the University of North Carolina's "Dean Dome" basketball arena, which was described as a priority of the athletic association, not of the university, during the construction fund-raising campaign in the late 1980s. Ironically, a decade later, this facility has yet to operate in the black and has received added subsidies from the state government."[20]

- The University of Nebraska opened 42 skyboxes on the west side of the stadium in 1999, part of a $36 million renovation project." "Athletic Director Bill Byrne's vision includes skyboxes in the north end of the stadium, and he has not ruled out the east side." "One issue (Chancellor Harvey Perlman) said, 'What would be the public's reaction to the university taking on a major athletic project at the same time that UNL is facing budget cuts of at least $10 million over the next two years.'" (*World-Herald Bureau*, November 21, 2001)

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[20] Thelin, J.R., "Good Sports? Historical Perspectives on the Political Economy of Intercollegiate Athletics in the Era of Title IX 1972-1997", *Journal of Higher Education*, Vol. 71, No. 4 (July-August 2000, p. 400)

- "The University of Connecticut recently upgraded its football program to Division I-A status from Division I-AA, breaking ground on a $90 million stadium and announcing plans to play a full Big East Conference schedule when 40,000-seat Rentschler Field opens in 2003." (*Lincoln-Tribune*, November 13, 2001)

- "...nine conference schools have spent more than $500 million on football facility improvements in the past five years. That total includes the $100 million face-lift under way at N.C. State's Carter-Finley Stadium and the $70 million ongoing upgrade at Georgia Tech's Bobby Dodd Stadium. The rationale for all this spending -- recruiting....That's why Maryland, the defending ACC champion, is in the middle of a 15,500-square-foot improvement to its Gossett Team House, which is adjacent to Byrd Stadium. That expansion will include a 3,500-square-foot meeting room for recruits and their families. (*Atlanta Journal Constitution*, July 28, 2002)

c. Administrative Personnel

Also noted in Fulks' 1999 study was the increase in the number of non-coaching personnel in all of the sub-divisions of Divisions I and II. However, the most startling increase was in Division I-A where non-coaching personnel grew from 50 full-time equivalents in 1989 to 74 in 1999.

d. Football and Men's Basketball Coach Salaries

Another significant trend in recent years is the extraordinary increase in salaries for football and men's basketball coaches. There is no regular collection of salary data made available to the public and aggregated NCAA and EADA salary data includes base salary only. The most accurate information comes from newspaper reports of institutional announcements of coach contracts or from Open Records Act requests by the media. It should be noted that the average salary for a full professor prorated to a 12-month contract was $95,096 in 1998-99.[21]

Examples:

- U. of Alabama "Franchione's (football coach) current contract, worth $1.1 million annually, has six years remaining." (*Huntsville Times*, January 7, 2002)

- "About half of the assistant football coaches in the Big XII football conference make more than $100,000 a year. At Texas, no assistant football coach makes less than $113,000 and raises are being considered for them too." (*Austin American-Statesman*, Wednesday, January 9, 2002)

- "In light of the Colorado Buffaloes' run to the Fiesta Bowl this season, Coach Gary Barnett could be in line for a raise that boosts his salary from six figures to seven... Barnett's base salary for 2001 is $720,000, not including incentives, in a deal that runs through the '05 season." (Denver Post, Thursday, January 3,

[21] American Council on Education, Center for Policy Analysis, *ACE Fact Sheet on Higher Education: Average Salary of Full-time Instructional Faculty on Nine Month Contracts*, 9/6/01. Note: The average salary of a full professor on a nine month contract was $71,322.

2002) "...the University of Colorado...expects to pay Barnett as much as $8 million during the next five years as its head football coach...Barnett's contract extension and salary – estimated at $1.6 million annually when a $2 million "back-loaded" incentive package is factored in are fair in today's market." (*Rocky Mountain News*, August 1, 2002)

- "Louisville landed Rick Pitino with a base salary of $1.025 million a year, with at least a $250,000 shoe contract. Pitino can also earn up to $500,000 in bonus incentives for things like winning the national championship or being named the coach of the year. If Pitino stays the duration of his six-year contract, he will get a fat $5 million bonus check. In short, that works out to be $2.25 million a year." "Kentucky's Tubby Smith makes $1.5 million and will receive $1.0 million as a bonus if he completes his six-year contract." (*Milwaukee Journal Sentinel*, January 7, 2002)

- University of Texas football coach Mack Brown "received a $250,000 salary increase – boosting his annual compensation package from $1.45 million to $1.7 million. He also received a three-year contract extension, taking it to 10 years through the 2011 season. In addition, the university plans to continue investing $300,000 per year in an annuity for Brown." (*Dallas News*, January 9, 2002)

- "Florida ...agreed to pay Ron Zook $1.5 million to be the Gators' new head coach. What has Ron Zook done to deserve that? He's never been a head coach...Notre Dame will spend about $1.5 million for its new football coach Tyrone Willingham, who won 54% of his games at Stanford...Tuesday, Indiana agreed to pay Gerry DiNardo $800,000 to coach the moribund Hoosier football team. Who had the leverage here? DiNardo's two previous attempts at head coaching – at LSU and Vanderbilt – wound up with him getting fired. In college football, $800,000 is now deemed entry level." (*Arizona Daily Star*, January 2002)

- "Illinois football coach Ron Turner received another post-season reward Thursday – a $400,000 one for leading the Illini to the Big Ten title and a Sugar Bowl berth. The salary increase raises his total compensation from $700,000 to $900,000 in 2002. The University's Division of Intercollegiate Athletics will deposit $200,000 per year into a deferred-compensation account in each of the next five years, and Turner would receive a potential $1.0 million payout in January 2007 if he remains head coach...Turner is 26-31 in five years at Illinois." (*Chicago Sports*, January 18, 2002)

- "Five SEC (league) teams pay their nine assistants (in football) more than $1.0 million combined per year." (*The Advocate*, Baton Rouge, La., April 21, 2002)

- "The new five-year contract signed Wednesday by LSU football coach Nick Saban would make him the nation's highest paid coach – if the Tigers win the national championship." "Saban's deal calls for him to be paid a minimum of $1.6 million annually after increases in his base salary and radio, TV and Internet compensation. But that figure can rise substantially – especially if he leads LSU to the national title in the Bowl Championship Series. In that event, LSU would be required to re-negotiate the deal and pay Saban at least $1.00 more than the highest paid college football coach in the country. According to a January 19th

article in the *Knoxville (Tenn.) News-Sentinel*, Florida State's Bobby Bowden and Oklahoma's Bob Stoops are the highest paid coaches at $2.0 million per year." (*The Advocate*, February 15, 2002)

- "Football coach Larry Coker has signed a contract extension through 2006. The extension, according to a UM (University of Miami) source, will begin by doubling Coker's salary from last season. In 2002, Coker will earn $900,000 not including incentive bonuses. With $100,000 raises each season, he will earn $1.3 million in the final year of the deal." (*Miami Herald*, Tuesday, February 5, 2002)

- "Spurrier, who led the University of Florida to the Orange Bowl this month, had been the first college coach to earn $2.0 million a year, a lofty plateau also occupied by the football coaches at Notre Dame, Oklahoma and Florida State. Last week, he signed a deal with the Washington Redskins that will pay him $5.0 million a year...Salary increases in the NFL have a ripple effect, affecting assistants and college coaches who make up a common talent pool...But keeping up with the market can be costly too. One result has been an accelerating 'arms race' among colleges that pour money into facilities and coaches' paychecks to match or best rivals. By last season, the three most highly paid college coaches, as a group, were pulling in $5.6 million. That was nearly twice as much as the three highest paid coaches made five years ago...Overall, compensation of head coaches has grown nearly 70% over the past five years, according to an annual survey by the Division I-A Athletic Directors' Association, said a source familiar with the data." "Knight Commission President Hodding Carter III, an ex-officio member of the Commission, said the escalation reflects 'a distortion of values and reversal of priorities in schools that pay these salaries.'" (*The Baltimore Sun*, January 25, 2002)

- "As recently as 1997, only two football coaches – Florida State's Bobby Bowden and Florida's Steve Spurrier – earned $1.0 million a year. Today more than 20 have surpassed that mark, including Gophers' coach Glen Mason, and salaries continue to increase annually." (*Minnesota Star-Tribune*, January 27, 2002)

- "According to the National Association of Collegiate Directors of Athletics, more than 20 schools nationally pay their assistant coaches[22] more than $1.0 million combined per year." (*The Advocate*, Baton Rouge, La., April 21, 2002)

- "Nolan Richardson can be the six-million-dollar man after all, thanks to deferred compensation packages that double his buyout with the University of Arkansas." "Richardson, who was fired as the Razorbacks' basketball coach on March 1, is owed $3.0 million in deferred compensation packages, according to a March 21 memorandum addressed to UA System President B. Alan Sugg...That $3.0 million is guaranteed and in addition to the $3.0 million conditional buyout of the remaining six years of Richardson's seven-year contract...Richardson's $6.0 million buyout is believed to be one of the largest ever for a college basketball coach. Former Louisville Coach Denny Crum received a $7.0 million buyout last year, but he had to sign a 15-year contract with the school as a consultant to get

[22] NCAA rules limit the number of assistant coaches in Division I-A football to nine. 2001-2002 NCAA Division I Manual, p. 61.

$5.0 million of it." (*Northwest Arkansas Democrat-Gazette*, Thursday, April 4, 2002)

- "LSU, however, boasts the highest-paid assistant ... offensive coordinator Jimbo Fisher. He earns $175,000 per year." (*The Advocate*, Baton Rouge, La., April 21, 2002

- "Tennessee, with $1.65 million paid to Philip Fulmer, pays its staff $2,699,800." (*The Advocate*, Baton Rouge, La., April 21, 2002)

- "A Star-Telegram survey of the (Big 12) Conference's 11 public institutions shows that five head football coaches' financial packages exceeded $1.0 million in guaranteed annual compensation and that more than half of the full-time assistant coaches have annual salaries in excess of $100,000." (*Star-Telegram*, Sunday, November 18, 2001)

- "At Oklahoma and Oklahoma State, the survey found the average salaries of assistant football coaches exceeded the average salaries of full professors by more than 50%." (*Star-Telegram*, Sunday, November 18, 2001)

- "Texas' nine full-time assistant coaches are being paid a total of $1.22 million, highest in the Big 12. The annual salaries of the Texas assistant coaches range from $113,668 to $198,640. The average salary of a UT assistant coach, $135,126, is $41,026 more than the average salary of a full professor at the university." (*Star-Telegram*, Sunday, November 18, 2001)

- "In Oklahoma, Mike Stoops, who carries the title 'co-defensive coordinator and associate head coach,' is making $201,000." (*Star-Telegram*, Sunday, November 18, 2001)

- "The two UT coordinators, Carl Reese and Greg Davis, are each making $198,640 and also will benefit from annuities established by the Regents if they remain in their positions past January 1, 2003." (*Star-Telegram*, Sunday, November 18, 2001)

- California gave former UCLA offensive coordinator Alan Borges a three-year contract for $175,000 – $180,000. (*Seattle Post*, Wednesday, May 30, 2001)

- "The proposed salaries for Washington's nine assistants average $130,000 annually, with coordinators topping the group at $170,000 a year." "For the first time the assistants will be offered two-year deals instead of the traditional one-year contracts. Washington isn't the only Pac-10 school offering assistants substantial compensation. USC lured offensive coordinator Norm Chow away from North Carolina State -- where he was paid $165,000 a year -- with an unprecedented five-year deal that reportedly will pay him $250,000 annually. Incentives could push that total to $350,000." (*Seattle Post*, Wednesday, May 30, 2001)

- New Trojans' coach Pete Carroll also hired former Huskies running backs coach Wayne Moses who will receive a two-year contract paying him a reported

$135,000 a year and including a $100,000 housing allowance. (*Seattle Post*, Wednesday, May 30, 2001)

- "Iowa State, coming off perhaps the most successful sports year in its history, cut these two programs (baseball and men's swimming) last month because its athletic department faced a $1.4 million deficit. Blame came quickly, much of it directed at the recently negotiated contracts for the school's football and basketball coaches. Football Coach Dan McCarney's compensation was doubled to $600,000 while Larry Eustachy's annual package rose to $1.1 million (from) approximately $500,000), even though the basketball coach had nine years left on a 10-year deal." (Fitzpatrick, F., "College Sports' Ill Wind Hits Cyclones", Knight Ridder Newspapers, Monday, May 14, 2001) Subsequently, "McCarney will receive a $25,000 increase, making his annual salary $625,000, said Athletics Director Bruce Van De Velde said Friday. In March, McCarney's contract was extended two seasons through Dec. 31, 2006." "ISU has a 29-50 record under McCarney. The Cyclones are 16-8 the past two seasons." (*GoCyclones.com*, July 22, 2002)

e. Football Bowls and Final Four Expenditures

When football teams participate in bowl games or men's basketball teams travel to the Final Four (the NCAA Division I men's basketball championship), they are permitted to fund transportation, hotel, meals, gifts, and other activities for an unlimited number of alumni, spouses of players, and staff members in what many members in higher education believe to be an embarrassing expenditure of institutional funds. Potential profits from bowl appearances are used for these expenses or funneled back into the football or basketball program to further continue what many athletic directors term, "the arms race."

Examples:

- The Atlantic Coast Conference allowed the (Clemson) Tigers $1,141,250 for bowl-related expenses (Humanitarian Bowl) and Clemson spent $1,137,443 total. (*The Charleston.Net*, Thursday, March 7, 2002)

- "In 1989, the University of Oregon agreed to buy 14,000 tickets to participate in the Independence Bowl in Shreveport. Only half were sold, and Oregon lost $178,000." (*New York Times*, Saturday, October 20, 2001)

- "The Nebraska athletic department will spend $2.3 million to participate in this season's Rose Bowl, more than twice what was paid to play in the Alamo Bowl a year ago. The school's official traveling delegation could reach 826 for college football's national championship game, including 176 players, 105 coaches and athletic department staff members, 362 band members and their staff, 16 cheerleaders, and 121 dependents of athletic department staff members. The biggest portion of the budget is $546,577 for contractually agreed upon bonuses paid Byrne (the athletic director), head coach Frank Solich, nine assistant coaches, and three staff members for NU's appearance in the national championship game." (*Lincoln Journal-Star*, Friday, December 28, 2001)

- "More than 400 football players, coaches, band members, cheerleaders, dignitaries, and support staff will be part of the University of Oregon entourage traveling to Tempe, Arizona, for the Ducks' New Year's Day appointment with the University of Colorado Buffaloes. Both schools receive $1.35 million to cover bowl-related expenses, including travel and lodging, for all those participating in the game plus a bevy of support staff and University executives. While that's a lot of money, it probably won't be quite enough to cover all the bills for the UO." (*The Register-Guard*, December 29, 2001)

- "Indiana University didn't just lose the NCAA Championship basketball game on April 1 – it also lost almost $85,000 for hotel rooms that were never used. The university was allocated 600 rooms in Atlanta during the Final Four and was obligated to fill these rooms with fans for four nights. That's a total of 2,400 room nights." (*Associated Press*, April 20, 2002)

- "BCS (Bowl Championship Series) schools annually receive about $5.0 million each in bowl and TV payouts, compared with less than $1.0 million for non-BCS schools such as San Diego State. Much of that $5.0 million is funneled back into football. The average football budget at a BCS school for 1999-2000 was $6.4 million. At non-BCS schools: $2.9 million." (*Lincoln-Tribune*, November 13, 2001)

f. Other Financial Excesses

Additional examples of poor financial judgment and excessive expenditures abound in intercollegiate athletics with no action by national sport governance organizations like the NCAA to curb such practices.

Examples:

- "On April 4, 2000, the men's volleyball program at San Diego State University was eliminated. About four months later, the Aztecs unveiled snazzy new football uniforms and became one of only two collegiate programs nationwide to equip their helmets with state-of-the-art titanium facemasks that were significantly lighter and more expensive than the older models." (*Minnesota Star-Tribune*, January 27, 2002)

- "First, the Gophers' football team stays in a fancy hotel before all of its home games. Total annual cost? $88,571.92. Since 1997, just five years, the university has invested $17 million in football for facilities, coaches offices and video equipment.".(Jay Weiner commentary, *Minnesota Public Radio*, December 14, 2001)

- The University of Georgia spent $179,243 recruiting this year's group of honor students, which approximates 525 per year. Between 25 and 30 football players were recruited at a cost of approximately $470,000. (*The Athens Banner-Herald*, Sunday, February 3, 2002)

- "In the months before former University of Kentucky Athletics Director C.M. Newton's retirement, top UK sports officials coordinated an effort with some of the program's biggest boosters to gather a goodbye gift. About $130,000 to buy

a vacation house in the Bahamas." (*Kentucky-Leader*, Saturday, February 23, 2002)

- Joey Harrington, quarterback at Oregon, was the leading candidate for the Heisman Trophy. The University of Oregon paid $250,000 for Harrington's appearance on a 100-foot billboard in Manhattan. (*New York Times*, Saturday, October 20, 2001.) For the 2002 season, Oregon spent $435,000 for seven in-state billboards and three in New York, Los Angeles, and the Bay Area. (*Los Angeles Times*, August 20, 2002.)

- "Or take media guides. Florida's is 432 pages and cost nearly $200,000 to print 22,000 copies. Not to be outdone, Texas' is 568 pages. Tennessee's is only 350 pages, but it arrives in a special Priority Mail carton adorned with a color-photo montage of players, coaches, cheerleaders and 104,079-seat Neyland Stadium." ("Pigskin Proliferation," *SignOnSanDiego.com*, November 11, 2001)

- "Next week, the Indiana Hoosiers will embark on a $30,000 campaign to help Randle El – moving this season to wide receiver – make his case as the nation's top college football player this fall." (*Associated Press*, June 29, 2001)

- San Diego State football: "Two decals per helmet, 65 helmets per game, 11 games per season. Last year the Aztecs ordered 1400 decals ... at a cost of $4,383.81. The entire equipment budget for the men's tennis team was $2,121. It is not just $4,383.81 for 1400 helmet decals, it is $40,720.90 for 600 pairs of Nikes. It is $44,528 for the charter flight to last season's game at Oregon State. It is $37,796 for hotel rooms and buses the night before home games." (*Union-Tribune*, November 11, 2001)

34. Even though football and basketball receive large portions of athletics budgets, do these programs support other sports? If so, should they receive special consideration?

A: Few football and basketball programs produce surpluses to support other sports. Only 22% of all NCAA football and 27% of all NCAA basketball programs are self-supporting (see Question 34) and fewer still produce substantial surpluses. Additionally, Division I football and men's basketball programs are engaged in an arms race that reduces the ability of these programs to maximize surpluses. Further, programs that purportedly make a profit are rarely self-supporting when accurate accounting methods are utilized. Multi-million facilities (practice fields, academic centers, weight rooms, etc.,) are excluded as cost items although they are direct costs of the sport. Finally, even highly successful programs have "down" years where they, too, must tap into general athletic or institutional funds.

However, whether football makes a profit is not the point. Even if a sport does make a profit, that fact does not exempt it from compliance with civil rights laws. Similarly, if another educational program like the MBA program of the business school of a university makes a profit, that program is not exempt from Title IX.

Since in other areas of the university "pockets" of revenue are seldom considered the exclusive domain of those who produce them (e.g. grant monies, hospital revenues), it

should be expected that any sport that produces more revenue than expenditures will help financially assist the institution in providing the necessary resources for other sports. This is the philosophical framework that guides decisions pertaining to the allocation of institutional funds. It does not affect the mandate that the university ensure that it offer equal opportunities in its athletics program overall.

35. Does Title IX enforcement hurt football programs?

A: NO. Football programs already receive adequate consideration under Title IX as mandated by the Javits Amendment, which allows increased expenditures based on "the nature of a sport" (e.g., football uniforms and protective equipment cost more than uniforms in other sports).

Football participation and budgets have continued to grow during the 30 years since Title IX was adopted. The only thing hurting football is excessive spending and an arms race that limits profitability, thereby limiting its ability to generate revenues to help support other sports.

36. Is it true that winning football programs aid in institutional development (i.e., increased fundraising for non-athletic program purposes)?

A: No. The mere fact that some athletic programs generate enormous revenues and a high degree of public visibility does not mean that success in athletics yields higher rates or levels of philanthropic or charitable donations to colleges and universities. In fact, studies examining the relationship between athletic programs and higher education fund raising over 70 years suggest that there is either no relationship or a very weak relationship at best between the two. Well respected scholars (Frey, 1985; Gerdy, 2002; Zimbalist, 1999, 2000; Sack & Staurowsky, 1998; Shulman & Bowen, 2001; Sperber, 2000; Thelin, 1994)) have concluded that there is little if any empirical support for the notion that athletic success translates into increased levels of alumni support for non-athletic purposes to institutions of higher learning. See Appendix C for a full report on this subject.

37. Do financial pressures show signs of abating?

A. NO. Ced Dempsey, current President of the NCAA, contends that the most recent financial data to be released in the fall of 2002 will reveal a continued proliferation of the Division I arms race, a decrease in the percentage of institutions with self-supporting athletic programs and an increase in the percentage of athletics programs reporting deficits (along with significant increases in the average amount of those deficits). These data cause Dempsey to pose the following critical questions in the NCAA Presidential Update dated June 17, 2002: "...where does reasonable investment in athletics as an educational component, entertainment for the university community or even a development tool end and misdirected fiscal folly begin? Are the expenses of colleges' sports aligned with the mission of an institution's athletics programs? Are our athletics budgets aligned with our broad-based programs or do the majority of our resources go to elite programs? Are more new dollars allocated to athletics than any other aspect of the campus? Is responding to the funding dilemma as simple as making athletics live within the university's means?" In conclusion, he urges CEOs to not only consider the answers to such questions, but also summon "the will to act" when the answers recommend financial policies different from current practices.

38. Is it likely that financial pressures will continue to erode the ability of institutions to support broad-based athletic programs?

A: YES. The "arms race" in Division I football and basketball shows no signs of abating. Deficits have been accumulating at some institutions for several years. At the University of Virginia last year it was revealed that there was a 10-year athletic deficit amounting to $47 million.[23] Recently, the University of Alabama at Birmingham athletic department was instructed to eliminate an athletic deficit of $7.5 million by 2005. The University of Minnesota projected a $31 million cumulative revenue shortfall over the next five years.[24]

Another reality is that many state legislatures have had to or may have to reduce the state allocations to institutions of higher learning. Not only will academic programs be affected, but also there is likely to be faculty pressure to reduce the amount of institutional support that goes to athletic programs. For example, following three consecutive years of statewide deficits, the Tennessee Higher Education Commission has recently recommended that over the next four years the $25 million used to subsidize universities' athletics programs each year in the state should be eliminated. Discussions on the same topic of institutional/state support are occurring at the University of Minnesota, where the two separate athletic departments are currently subsidized at approximately $10 million per year.

39. What are some of the budget choices available to institutions that face budget constraints?

A: When resources are limited, schools have several options for achieving gender equity, such as:

1. Reduce the funding of all existing sports and use the financial savings to fund new women's sports.

2. Maintain funding of the most important men's sports, discontinue minor men's sports and use those savings to fund new women's sports.

3. Create a tiered funding structure where one or two men's sports and an equal number of participation opportunities for women are treated very well; a second tier where equal numbers of male and female athletes are treated in a less expensive way (e.g., regionally limited competition, 50% of maximum scholarship limits, etc.); and a third tier where equal numbers of male and female athletes are treated in an even lower cost way (e.g., part-time coaches only, no scholarships).

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[23] Suggs, Welch. "Female Athletes Thrive, but Budget Pressures Loom", The Chronicle of Higher Education, May 18, 2001.

[24] The Office of the Vice President and Chief of Staff, University of Minnesota, "Current and Future Financial Challenges in Intercollegiate Athletics", 7 Dec.,2001 Note:The Daily O'Collegian, Oklahoma, reported in its February 19, 2002 issue that "The University of Minnesota-Twin Cities faces a $55 million deficit through the next five years, the worst in the NCAA, according to an article in the February 8th issue of the Chronicle of Higher Education" and "In 2000, the Minnesota Golden Gophers spent $44.9 million on sports, with $7.3 million alone going to the football team. During that same year the Gophers' football team brought in $2.5 million net profit, the lowest profit margin in the Big Ten Conference."

These are institutional choices, any of which can produce Title IX compliance. Choosing option 1 or 3 results in maintaining all opportunities for male athletes while increasing opportunities for female athletes. Option 2 results in loss of opportunities for male athletes.

40. How have institutions that have added women's sports programs without cutting men's sports programs achieved that goal?

A: In the 2001 GAO Report, schools reported three means of adding women's teams without cutting men's teams: obtaining funding from non-school sources, finding ways to contain costs, and/or reallocating existing revenues.

Obtaining additional revenues and reallocating existing revenues rather than containing costs were more frequently used strategies among the 693 schools that added one or more intercollegiate athletic teams over the 1992–93 to 1999–2000 period without discontinuing a team. Sources of funds varied with the size of the intercollegiate athletic program. Schools with smaller programs (NCAA Division III and NAIA) were more likely to use additional funds from the institution's general fund and/or reallocate savings from budgets cuts across all sports. Larger schools (NCAA Division I and II) were more likely to rely on increased donations from individuals and businesses and charging rental fees for the use of athletic facilities to outside entities.

Cost containment efforts among all institutions examined included:

- Recruiting most prospective student-athletes via telephone rather than in person,
- Denying requests for some teams to be elevated from club to varsity status,
- Replacing a retiring full-time faculty member with a coach who also assumed other administrative duties,
- Limiting the size of the football team roster,
- Trimming administrative costs,
- Not awarding the maximum number of scholarships allowed, and
- Limiting team travel outside the region to one trip every 2 to 3 years to minimize travel expenses.

41. Are there new financial solutions that should be considered to address the current budget crisis in intercollegiate athletics?

A: YES; however, higher education must make a commitment to pursuing major financial reforms. The following options should be immediately explored to address those areas in which expenditures appear to be out of control:

1. **Contract Limitations.** Approve national legislation to create one-year, renewable contracts for all coaches and staff in order to eliminate such practices as "buy-outs" and "golden parachutes."

2. **Debt Service and Capital Expenditures.** Require the approval of the Faculty Senate for major renovation or the building of new athletic facilities.

3. **Recruiting Reform.** Reform the current recruiting system; consider allowing campus tryouts for prospective student-athletes (as is done in Division II) and other ways to restrict the excessive costs of off-campus recruiting.

4. **Size of Coaching Staffs.** Reduce coaching staffs and base the number on a reasonable coach/student-athlete ratio.

5. **Size of Non-Coaching Staffs.** Limit the number of non-coaching personnel to a figure based on the number of student-athletes in the athletic department (e.g. employees in the areas of sports information, marketing and promotions, administrative assistants, secretarial support, etc.).

6. **Size of Administrative Staffs.** Eliminate administrative assistants in specific sports.

7. **Excessive and Unnecessary Expenditures.** Prohibit football and men's basketball practices such as staying in hotels before home games; non-player travel parties to bowl and championship games, entertainment and other non-essential expenditures during pre-season training periods, etc.

8. **Scholarships.** For example, change "head count" scholarships to "equivalency based" scholarships and reassess scholarship limits in all sports to conform to commonly accepted team size.[25]

9. **Travel Expenses.** Streamline all travel parties during the regular season by establishing maximum travel party limitations.

10. **Number of Competitions.** Reduce the length of seasons in appropriate sports and curtail the excessive number of competitions in some sports (e.g. softball and baseball) and consider reducing or eliminating institution-sponsored practice and competition in the off-season.

11. **Sport Budget Limits.** Establish legislation to limit overall maximum expenditures (all inclusive) on a per sport basis with differences in travel budgets based on geographical factors.

12. **Roster Limits.** Establish roster limits in every sport based on numbers of athletes required to practice and compete.

13. **Antitrust Exemption.** Some have suggested that Congress should give schools a limited exemption from anti-trust laws in order to tie the total recompense for head and assistant coaches to the top five full professors at the institutional or conference level or other justifiable salary levels.

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[25] If football scholarships in Division I-A were reduced from 85 to 65, using the 1999 average scholarship costs and applying a formula of 30% in-state student-athletes and 70% out-of-state student-athletes, there would be a savings of almost $300,000 each year. (Fulks, 1999, p.12) In this division, the average expense for wrestling in 1999 was $330,000; for men's gymnastics, it was $270,000. (Fulks, 1999, p.38)

PART IV.
ISSUES RAISED BY THE COMMISSION ON OPPORTUNITY IN ATHLETICS[26]

42. Are Title IX standards for assessing equal opportunity in athletics working to promote opportunities for male and female athletes?

A: This question is incorrect in that it implies that Title IX, a law designed to remedy lack of athletic opportunities for females, the underrepresented gender, must also promote opportunities for males, the overrepresented gender. Federal legislation cannot dictate institutional choices with regard to academic or extracurricular programs. While laws can prohibit discrimination and require equal opportunities for the underrepresented gender, schools and colleges are permitted to achieve such equality by adding opportunities for the underrepresented gender, decreasing opportunities for the overrepresented gender or a combination of the two.

The question should be, "Are Title IX standards for assessing equal opportunity in athletics working to promote gender equality in sport?" The answer to this question is a qualified "yes." See relevant questions in preceding sections, specifically questions 12, 14, 17, 18 and 19. Progress is being made, but there is still more to be done with regard to participation, scholarships, budgets, and equal treatment.

Further, the attacks mounted against the three-part test are baseless and rely on invalid and illegal stereotypes about women's interests in athletics. See relevant questions in preceding sections, specifically questions 6 through 11.

What is needed is stronger enforcement of existing standards, not a change in those standards to protect the special interests of the few.

Participation

The growth of female participation at the high school and college levels has been significant but is still significantly below participation opportunities afforded male athletes. **Males have 1,136,915 or 40.8% more athletics opportunities at the high school level and 57,950 or 38.4% more athletics opportunities at the college level than females.**[27] See Tables 14 and 15.

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[26] A Commission on Opportunity in Athletics (Commission) was established by the U.S. Secretary of Education in July of 2002 to collect information, analyze issues, and obtain broad public input directed at improving the application of current Federal standards for measuring equal opportunity for men and women and boys and girls to participate in athletics under Title IX. The Commission has been directed to prepare a written report by January 31, 2003, on whether Federal standards should be revised, and if so, how the standards should be revised. The Commission has also been charged to recommend other steps that might be taken to improve the effectiveness of Title IX. The Commission was specifically directed to answer eight questions, each of which is addressed in this section.

[27] Based on 2000 data from the National Federation of State High School Associations: 3,921,069 male high school participants and 2,784,154 female high school participants representing a difference of 1,136,915 participation opportunities or 40.8% (1,136,915/2,784,154). Based on 2000 data from the NCAA: 208,866 male college participants and 150,916 female college participants representing a difference of 57,950 participation opportunities or 38.4% (57950/150,916)

TABLE 14
High School Athletics Participation Survey Totals 1971-2001

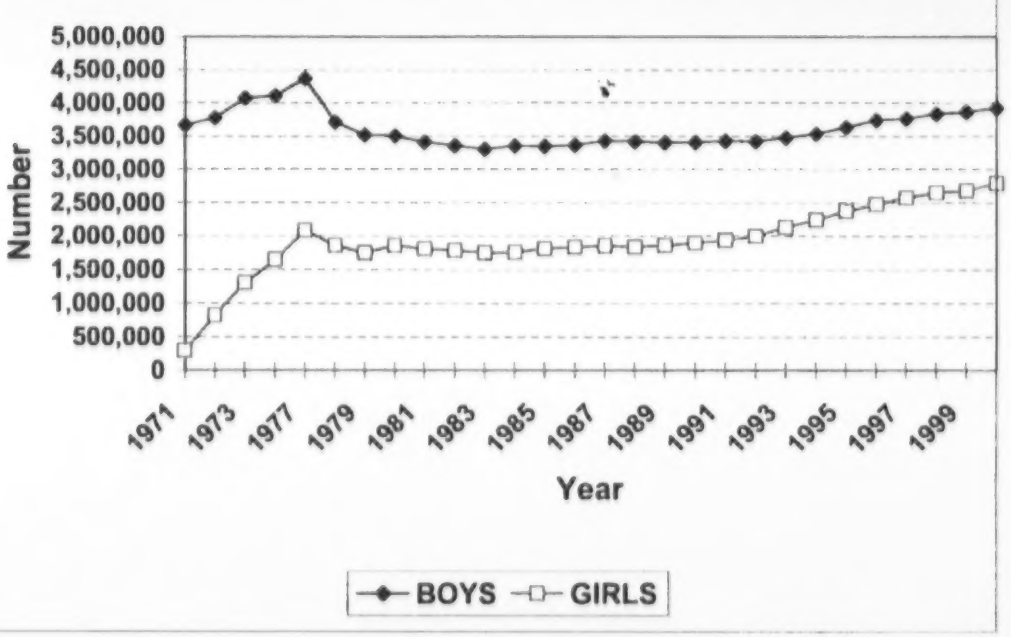
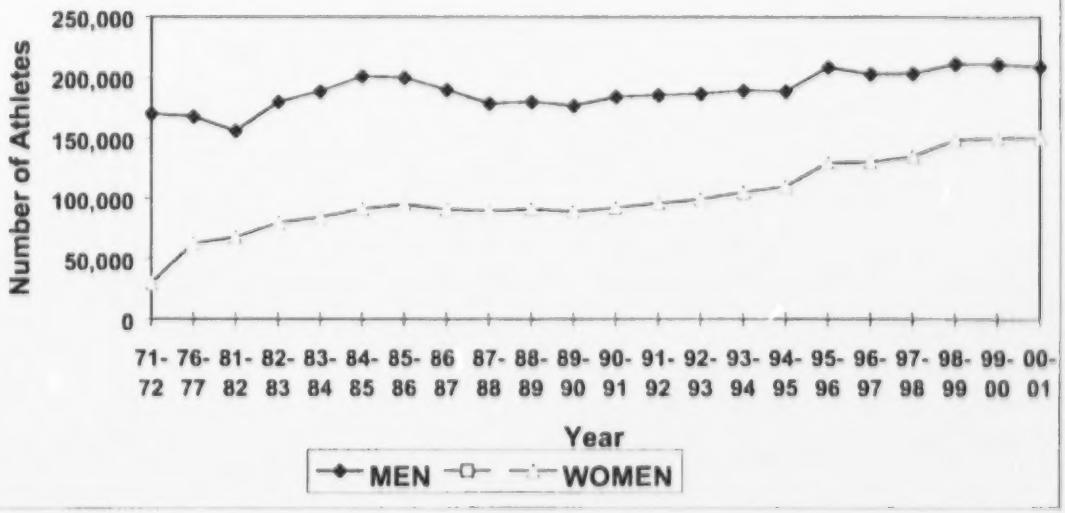


TABLE 15
NCAA Athletics Participation
1971-2001



-- NCAA Year-By-Year Sports Participation 1982-2001,
Sports and Recreation Programs of Universities and Colleges 1957-82 (NCAA)

Scholarships
Male athletes receive $133 million, or 36 percent more, than female athletes in college athletic scholarships each year at NCAA member institutions.[28] Athletic aid for female athletes must be within 1%, or one scholarship, (whichever is greater) of the females' athletic participation rate, unless there are legitimate nondiscriminatory reasons to justify a larger disparity. For example, if 42% of a school's athletes are women, the school will be in compliance with Title IX if it provides between 41% and 43% of its total athletic scholarship dollars to those athletes. Thus, failure to provide female athletes with equal opportunities to participate in athletics adversely affects their Title IX scholarship entitlement.

Other Measures
Although women in Division I colleges comprise 53% of the student body, they receive only 41% of the opportunities to play intercollegiate sports, 43% of athletic scholarship dollars, 36% of athletic operating budgets, and 32% of the dollars spent to recruit new athletes.[29] On a per-athlete basis, for example, Division I colleges spent an average of $2,983 per female athlete as compared to $3,786 on male athletes.[30]

National data on expenditures do not exist for girls' and boys' interscholastic sports, but anecdotal evidence suggests that similar financial disparities also exist at the elementary/secondary level.

43. Is there adequate Title IX guidance that enables colleges and school districts to know what is expected of them and to plan for an athletic program that effectively meets the needs and interests of their students?

A: YES, in addition to the statutes and interpretations, the Department of Education Office of Civil Rights *Title IX Athletics Investigator's Manual*[31] (125 pp.) is available to administrators online and contains detailed information on every element of Title IX compliance. In addition, national collegiate athletics governance organizations and numerous state high school associations make similar materials and workbooks available to their members and conduct workshops on Title IX compliance. In addition to written materials, 10 regional offices of the Office for Civil Rights are available to provide technical assistance. Also, a number of coaching organizations have generated checklists to facilitate evaluation. There is no absence of detailed information on this topic.

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[28] NCAA 1999-2000 Gender Equity Report:.
DI Men: 1,411,400* 295 institutions = 416,363,000 DI Women: 1,055,500*295 = 311,372,500
DII Men: 392,100* 228 = 89,398,800 DII Women 268,000 * 61,104,000
Men's Total DI and DII-=505,761,800 Women's Total DI and DII- =372,476,500
Difference = $133,285,300 = 36% Extrapolated from data.

[29] NCAA, Gender-Equity Study (2000).

[30] NCAA 1999-2000 Gender-Equity Report:
Operating Budget/ Participants- DI Male $882,100/233=$3786 DI Female $486,200/163= $2983
DII Male $225,600/155= $1455 DII Female $115,100/96= $1199
DIII Male $137,000/184= $745 DIII Female $ $94,700/123=$770

[31] See http://www.ncaa.org/gender_equity/resource_materials/AuditMaterial/Investigator's_Manual.pdf

Such Title IX guidance also includes concise information on how schools and colleges can meet the three-part test: "fully and effectively accommodating the interests and abilities of the underrepresented sex".

According to the 1996 OCR Policy Interpretation, institutions may comply with prong three of the three-part test by offering every team for the underrepresented sex in which:

1) There is unmet interest in a particular sport;
2) There is sufficient ability to sustain a viable team in that sport; and
3) There is a reasonable expectation of competition for that team in the institution's normal competitive region.

Determining the Underrepresented Sex. To determine whether there is an underrepresented sex, compare the institution's student body to its athletics program and see if a disparity exists. For example, if the student body is comprised of 50% men and 50% women, and the athletics program is 55% men and 45% women, then women are the underrepresented sex.

Determining Unmet Interest of the Underrepresented Sex. Methods that institutions can use to identify unmet interest include the following:

- Reviewing on-campus programs for the underrepresented sex to include club sports and intramural sports.
- Reviewing feeder programs for the underrepresented sex to include high-school programs, junior college programs, and recreational programs in the institution's normal recruitment area. [Note: Working with the state high school activities associations in determining popular high school sports in the area has often proven helpful.]
- Looking also for specific requests by students to add a team or to elevate a club team to varsity status.
- Conducting interviews with students, coaches, and administrators.
- Having students fill out questionnaires or surveys regarding interests in particular sports.

Determining Sufficient Ability to Sustain a Viable Team. Review whether interested students and admitted students have the potential to sustain an intercollegiate team, such that the ability of the athletes would be competitive with their potential opponents.

Determining Reasonable Expectation of Competition for that Team in the Institution's Normal Competitive Region. Look at available competitive opportunities in the geographic area in which the institution's athletes primarily compete. Often there exists interest and ability, but no competitive opportunities within the institution's normal competitive region for the underrepresented sex; therefore the college is not obligated to add the sport.

44. Is further guidance or other steps needed at the junior and senior high school levels, where the availability or absence of opportunities will critically affect the prospective interests and abilities of student athletes when they reach college age?

A: Further guidance is unnecessary given the volumes of guidance already provided. However, other steps appear to be needed to address high school level compliance. Thirty years after the passage of the law, girls and women in sport are still being

discriminated against in the provision of athletic opportunities treatment and benefits as indicated by the 1.1 million participation gap between high school male and female athletes and other anecdotal evidence. Thus, stronger enforcement measures are required such as increased OCR-initiated random investigations. Further, the DOE Office of Educational Research should collect data that will permit better monitoring of high school and junior high school level compliance. Consideration should be given to amending the Equity in Athletics Disclosure Act (EADA) to include high school as well as college programs or directing the DOE Office of Educational Research to collect such statistics.

45. How should activities such as cheerleading or bowling factor into the analysis of equitable opportunities?

A: There have been proposals by schools and state high school athletic associations to count cheerleading, dance line, drill team, twirling, recreational clubs, and other activities as varsity sports. Historically, these activities have been spirit support group activities that have not involved competition between teams. However, in some circumstances, these activities may be considered bona fide sports.

A clearly defined method of determining whether an activity is a varsity sport is in place and has been successfully used by the Office of Civil Rights in dealing with this question. OCR does not rely on a specific definition of a sport or on a claim by the institution that the activity is part of the athletic program. Rather, OCR's practice is to make a case-by-case determination based on various factors including the purpose of the activity, the specification of seasons and competitions, the adoption of official rules and personnel requirements, etc. OCR's determination also takes into consideration factors identified by athletic organizations or associations to differentiate between a support activity and a sport. The manner in which the activity is conducted determines whether cheerleading or recreational sports like bowling are classified as varsity teams. See Appendix A for a copy of standard OCR correspondence to educational institutions and athletic governance institutions regarding this definition and how such determinations are made.

OCR's position on cheerleading is supported by national cheerleading organizations. The Universal Cheerleaders Association, the American Association of Cheerleading Coaches and Advisors, and the National Federation of State High School Athletic Associations (See Appendix B) support the OCR definition of varsity sport as it applies to cheerleading. Some high school associations recognize and conduct cheerleading championships according to the OCR guideline, while the majority of states retain cheerleading as a student spirit activity rather than varsity sport.

46. How do revenue-producing and large-roster teams affect the provision of equal athletic opportunities?

A: It is important to note that "revenue-producing" and "profit-generating" are not equivalent terms. Many sports produce revenues, but few produce profits. Among NCAA programs in all competitive divisions, 78% of all football programs and 73% of all basketball program spend more than they bring in and contribute nothing to other sport budgets (see extensive discussion under questions 30 through 36).

Rising costs and excessive expenditures, not Title IX, prevent optimum profit generation to help support other sports. Higher education should not expect the federal government to weaken its commitment to gender equity in response to higher education's inability to control expenditures. Higher education must address budgetary issues and excesses in intercollegiate athletics.

In Division I-A, 72% of the total men's sports operating budgets are spent on two sports, football and basketball (Fulks). See detailed discussion under question 33. This skewed allocation of significant funds creates difficulty for educational institutions when considering how they will develop equal opportunity women's programs. When resources are limited, schools have several options for achieving gender equity:

a. Reduce the funding of all existing sports and use the financial savings to fund new women's sports.

b. Maintain funding of the most important men's sports, discontinue minor men's sports and use that savings to fund new women's sports.

c. Create a tiered funding structure where one or two men's sports and an equal number of participation opportunities for women are treated very well; a second tier where equal numbers of male and female athletes are treated in a less expensive way (i.e., regionally limited competition, 50% of maximum scholarship limits, etc.); and a third tier where equal numbers of male and female athletes are treated in an even lower cost way (i.e., part-time coaches only, no scholarships).

These are institutional choices, any of which can produce Title IX compliance. Choosing option 1 or 3 results in maintaining all opportunities for male athletes while increasing opportunities for female athletes. Option 2 results in loss of opportunities for male athletes. Title IX does not dictate any of these choices.

It is difficult for football programs committed to unlimited or large rosters to choose option 3. The larger the roster of the men's team being treated in more expensive ways, the greater the expense of treating a large number of women in the same way. Thus, if a football team has a roster of 215 players, the price tag for treating similar numbers of female athletes in the same way is very high. Thus, some schools have put "caps" on participation numbers in men's sports as a way of controlling costs and gender equity obligations. Institutions that decide to keep large roster teams do not choose Option 3 for this reason, are unlikely to choose Option 1 because they are not inclined to limit football in any way.

Any suggestion that football should be exempt from Title IX or excluded in any way should be rejected. Congress has considered and rejected such proposals on four separate occasions. No sport should be excluded from Title IX compliance. Males are entitled to participate in the sports in which they have an interest, and females are entitled to participate in the sports in which they have an interest. If male athletes prefer to concentrate a large number of their participation opportunities in one sport, that's fine. By contrast, if female athletes prefer to spread their participation opportunities across numerous sports, that's fine too.

The size, number, competitive level, and quality of sports programs are individual institution decisions, just as the size, number, and quality of academic programs are

institutional prerogatives. The government cannot dictate that programs of different sizes be treated differently, just as it cannot specify particular varsity sports be added, retained, or discontinued.

Affording special consideration to football because it brings in more revenues than other sports or accommodates more students would permit an economic or program size justification for discrimination. This would allow an institution to maintain that any academic program that pays for itself or is of certain size could discriminate on the basis of sex

47. **The Department has heard from some parties that whereas some men athletes will "walk on" to intercollegiate teams - without athletic financial aid and without having been recruited—women rarely do this. Is this accurate and, if so, what are its implications for Title IX analysis?**

A: **A "walk-on' is just like any other participation opportunity.** "Walk-on" is a term usually reserved for an athlete who is not a scholarship recipient or who has not been recruited by the coach. At highly competitive levels, a walk-on may have little chance to play or, if they do get put in a game, play for only a small period of time. A walk-on participation opportunity is just like any other participation opportunity because it is impossible to predetermine those (a) athletes who will definitely enter a game and play a lot, (b) athletes who will enter a game but not play for a long period and (3) athletes who will never get into the game. All of these athletes receive the benefits of coaching, practice and playing uniforms, preferential course scheduling (if the school allows this benefit for athletes), academic support programs, pre-season training period room and board, medical services, access to weight rooms and weight training coaches, etc. As such, they occupy participation opportunities and must be counted as such.

Historically, because of the status and exceptional treatment of football players and other traditionally successful sports at some schools, male athletes are willing to "walk on" to a team because these benefits. Society's long-term support of athletics for boys and men has resulted in males being encultured into "participating" in sport for the prestige of being a team member, whether or not they actually get to play, while women have participated for years with little or no encouragement or accolades and, in some situations, being criticized for participating. Another reason for the lack of walk-ons in women's sports is that the operating expenses for women's teams are so low that lack of budgetary resources becomes a deterrent for coaches to carry large teams for fear that further diluting limited resources on extra uniforms, travel parties, etc., will take away from basic needs required for sport success.

Walk-on status has no implications for Title IX analysis. If male athletes are interested in walk-on opportunities and schools are willing to provide such opportunities for them, instead of participation in other sports, their participation is valid, whether or not they get a chance to play. They fill an institutionally provided and supported participation opportunity. However, Title IX does not require mirror image programs. If men are interested in playing or walking on to the football team, women do not have to play football or walk on to a football team. Women are entitled to have their participation opportunities met according to their interests and abilities. Until there are women's sports with the status and funding of football or similar men's sports, there is no reason to expect women to wish to be walk-ons. It's more fun to play.

48. In what ways do opportunities in other sports venues, such as the Olympic Games, professional leagues, and community recreation programs, interact with the obligations of colleges and school districts to provide equal athletic opportunity? What are the implications for Title IX?

A: **Olympic Games.** There are 39 Olympic and six Pan American sports for which there are single national sport governing bodies established under the jurisdiction of the United States Olympic Committee. Each of these entities conducts national championships, which may be on the schedule of NCAA institutions that sponsor the respective sport. The NCAA, the largest national collegiate governance association, conducts championships at various levels in only 22 sports. Institutions are not obligated to provide NCAA-sponsored championship opportunities for their male or female athletes. As long as they provide the same quality post-season opportunities, they could choose to use national sport governing body championships in lieu of or in addition to participation in NCAA championships.

Thus, there is no Title IX related obligation for colleges and universities to sponsor particular sports or contribute to the support of these non-college national sports governing bodies.

Any support of the U.S. Olympic effort is at the option of the educational institution and is a matter of philosophy, not Title IX compliance. College and universities do support the Olympic effort in that many top college team coaches are often Olympic coaches and they give athletic scholarships to athletes who might go on to participate in the Olympic Games. Therefore, college sport provides a subsidized training environment for elite athletes who contribute to the success of the United States in the Olympic Games.

The issue of discontinuing men's teams and its impact on the success of our country's Olympic success is a philosophical and financial matter for educational institutions to consider; not a legal matter.

Professional Sports. Similarly, there is no Title IX related responsibility for college teams to produce athletes for professional teams. In fact, respected educational leaders question whether the emphasis and money spent on college football can be justified with any intimated relationship between college sports participation furthering a student's chances of success in professional play. NFL life expectancy is 3.2 years, while players do not receive retirement benefits unless they play for five or more years.

Experts agree that higher education, a nonprofit entity, is currently heavily subsidizing the professional sports of football and basketball because these professional leagues do not have to have "farm" teams or minor leagues because of the strength of the college program, which provides this function.

Community Recreation Programs. Title IX applies to any federally funded education program or activity. Thus, city and state departments of recreation may be obligated to comply with the law just as colleges and universities do. Any community program that offers sports opportunities to youth assists in the development of interest and sport skills.

49. Apart from Title IX enforcement, are there other efforts to promote athletic opportunities for male and female students that the Department might support, such as public-private partnerships to support the efforts of schools and colleges in this area?

A: **While there may be efforts, such as public-private partnerships, that the Department chooses to support to promote athletics opportunities, the Department has a duty and responsibility to ensure compliance with Title IX in all education programs or activities receiving federal financial assistance.**

Thus, any efforts targeted at educational institutions do not relieve schools of their obligation to comply with the law, or the Department of its obligation to enforce the law. Additionally, any new educational efforts that may be provided federal funds, must also comply with Title IX.

APPENDIX A

Department of Education Office for Civil Rights Letter on Definition of Varsity Sport

April 11, 2000

Mr. David V. Stead
Executive Director
Minnesota State High School League
2100 Freeway Boulevard
Brooklyn Center, Minnesota 55430-1735

Dear Mr. Stead:

This is in response to your letter, received March 1, 2000, wherein you asked that the Office for Civil Rights (OCR) provide a definition of sport. Your interest is to share an OCR-approved definition of sport with administrators, decision-makers, and coaches in the state of Minnesota as they address new initiatives for student-athletes.

As you know, OCR is the agency responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq. and its implementing regulation at 34 C.F.R. Part 106 (Title IX). The Title IX implementing regulation, at 34 C.F.R. § 106.41(a), states:

> No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

As part of its responsibility for enforcing the Title IX provisions regarding athletic programs, OCR must determine which activities are part of an institution's athletic program. OCR does not rely on a specific definition of a sport. Nor does OCR rely solely on a claim by the institution that the activity is part of the athletic program. Rather, OCR's practice is to make a case-by-case determination based, in part, on the factors you have already identified in your letter, including the purpose of the activity, the specification of seasons and competitions, and the adoption of official rules and personnel requirements. OCR's determination would also take into consideration factors identified by athletic organizations or associations to differentiate between support activity and a sport.[32]

To be as specific and responsive to your request as possible, the following discussion enumerates both the types of inquiries OCR would make and the process OCR would follow to assess whether an activity is a sport.

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[32] For example, the NCAA Committee on Women's Athletics recently voted to amend the emerging sport guidelines to include language that differentiates between a support activity and a sport. The added language states that "for purposes of reviewing emerging sports proposals for NCAA member institutions, a sport shall be defined as an institutionalized activity involving physical exertion with the primary purpose of competition within a defined competitive season and standardized rules with rating/scoring systems ratified by official regulatory agencies and governing bodies."

Types of Inquiries:

In determining whether an activity is a sport OCR will consider on a case-by-case basis:

- whether selection for the team is based upon factors related primarily to athletic ability; and,
- whether the activity is sponsored for the primary purpose of preparing for and engaging in athletic competition against other similar teams; and,
- whether the team prepares for and engages in competition in the same way as other teams in the athletic program, e.g.., receives coaching, conducts try outs; engages in regular practice sessions, and has regularly scheduled athletic competitions; and,
- whether national, state and conference championships exist for the activity; and
- whether the activity is administered by the athletic department.

By contrast, if the purpose of the team is primarily to support and promote other athletes, then the team will not be considered to be engaged in a sport.

OCR may also consider other evidence relevant to the activity, which might demonstrate that it is part of an institution's athletic program. A non-exhaustive list of the evidence that may be considered includes:

- whether the activity is recognized as part of the interscholastic or intercollegiate athletic program by the athletic conference to which the institution belongs and by organized state and national interscholastic or intercollegiate athletic associations;
- whether organizations knowledgeable about the activity agree that it should be recognized as an athletic sport;
- whether there is a specified season for the activity which has a recognized commencement and ends in a championship;
- whether there are specified regulations for the activity governing the activity such as coaching, recruitment, eligibility, and the length and number of practice sessions and competitive opportunities;
- whether a national, state, or conference rule book or manual has been adopted for the activity;
- whether there is national, conference, or state regulation of competition officials along with standardized criteria upon which the competition may be judged; and,
- whether participants in the activity/sport are eligible to receive athletics awards (e.g., varsity awards).

Process to be Followed:

Consistent with earlier policy statements, there is a presumption by OCR that cheerleading and other like activities are extracurricular activities and are not considered sports for Title IX purposes. OCR remains prepared to assist any state or national athletic association in evaluating on a case-by-case basis whether a particular activity would be considered by OCR to be part of an athletic program for purposes of Title IX compliance. Such an evaluation allows for a full analysis of the circumstances surrounding the particular activity. Please note that OCR's case-by-case approach to making this determination has worked effectively; consequently, disputes over whether a particular activity is part of an institution's athletic program rarely occur.

I hope that this response clarifies for you the evidence OCR would consider and the process OCR would follow in determining whether an activity is part of an athletic program.

If you have additional questions or if I may otherwise be of assistance, please do not hesitate to contact me at (312) 886-8433.

Sincerely,

Dr. Mary Frances O'Shea
National Coordinator
for Title IX Athletics
Office for Civil Rights

APPENDIX B

SUPPORT OF NATIONAL ORGANIZATIONS FOR OCR DETERMINATION OF VARSITY SPORT

Universal Cheerleaders Association

Donna Lopiano
Executive Director
Women's Sports Foundation
Eisenhower Park
East Meadow, NY 11554

Dear Donna,

I read in the *USA Today* that one of the eight questions being asked of the new Title IX Committee is how cheerleading and bowling should be counted. As we have discussed before, we feel by definition cheerleading should not be recognized as a sport because the primary reason for having the program is not to compete but instead to provide student leadership and support for interscholastic athletics. The American Association of Cheerleading Coaches and Advisors and the National Federation of High Schools both supported this position this year. (see enclosed)

Donna, I think it's important to point out that two high school associations aggressively seeking approval to include cheerleading as a Title IX Sport (Colorado and Minnesota) have also asked to include dance teams. Combining dance team numbers with cheerleading numbers would approach those of men's football programs.

I hope that you will make the committee aware of the position taken by the AACCA, the National Federation and your association's "position paper." If I can assist you or provide further information please don't hesitate to call me.

Best Regards
Greg Webb, Senior Vice President
Universal Cheerleaders Association
6745 Lenox Center Court, Suite 300
Memphis, TN 38115
P.O. Box 752790, Memphis, TN 38175-2790
1-888-CHEERUCA 901-387-4300 Fax 901-387-4358
www.varsity.com

American Association of Cheerleading Coaches and Advisors

May 29, 2002

Dr. Mary Frances O'Shea
National Coordinator for Title IX Athletics, Office for Civil Rights
Midwestern Division, Chicago Office
111 North Canal Street, Ste 1053
Chicago, IL 60606 – 7204

Dr. O'Shea,

It has been some time since we last communicated. With the new season approaching, I wanted to keep you up-to-date with the latest cheerleading news.

I know that the OCR uses the positions of national organizations as one of its criteria for determining whether an activity meets the qualifications of Title IX compliance. The National Federation of State High School Associations has recently released its 2002 Spirit Rules Book (enclosed), and in it, they clearly agree with our association that cheerleaders and dance team members are primarily a "support" group.

Although some spirit teams do choose to engage in competitions from time to time, most do not. Even the schools that do compete will likely only do so once or twice in a school year, while they will lead the crowd in the school traditions at every football and basketball game.

We strongly feel that there is a "hyb·id" nature to cheerleading that combines athleticism and leadership as school representatives. Their primary focus is to raise school spirit and lead the crowd in support of their athletic teams. Competition is an option, but a secondary option at best.

The outcry from some athletic directors to call cheerleading a sport is primarily based on the need to meet Title IX requirements. But to take the existing activity of cheerleading and label it "sport" for the purposes of Title IX is to take away the opportunities that Title IX is in place to protect.

Feel free to contact me with regards to this matter.

Best regards,

Jim Lord
Executive Director

Encl.

American Association of Cheerleading Coaches and Advisors
6745 Lenox Center Court – Suite 300
Memphis, TN 38115
1-800-533-6583
Fax 901-251-5851

National Federation of State High School Athletic Associations

National Federation of State High School Athletic Associations
Spirit 2002-2003 Rules Book

Pg. 9 "The term "spirit groups" may encompass cheer squads, dance/drill/pom squads and flag corps as well as other groups designated by the school. Spirit groups shall serve as support groups for the interscholastic athletic program within the school and, as such, play a very important role in the administration of athletics/activities contests. Each squad should strive to boost school spirit, promote good sportsmanship, develop good, positive crowd involvement and help student participants and spectators achieve the most worthwhile educational objectives of the interscholastic program."

"Competition should be a secondary consideration for spirit groups unless designated as being a purely competitive squad."

Pg. 10 "If spirit competition is approved as part of the school's activities, it should be placed in perspective with the total educational program, and should not interfere with the primary responsibility of spirit groups, which is to support the interscholastic athletic program. Spirit competition should serve to develop leadership, confidence and skill.

APPENDIX C

The Relationship Between Athletics and Higher Education Fund Raising: The Myths Far Outweigh the Facts

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Introduction

Since the formalization of intercollegiate athletics within institutions of higher learning in the late 1800s/early 1900s, college presidents, legislators, alumni/nae, faculty, athletic directors, and average citizens have speculated about the relationship between the success of athletic programs and the generosity of donors. As a matter of first impression, it is easy to understand why most people assume that big-time college sport has a positive influence on donation levels to institutions. Given the multi-billion dollar industry which is college sport and the degree to which the public is exposed to March Madness and the Bowl Championship Series via television, print media, and the Internet, circumstantial evidence reinforces a common sense belief that big-time college sport possesses the potential to generate big-time revenue for colleges and universities.

One would be naïve to deny that substantial amounts of money are generated by football and men's basketball. However, caution should be used so as to avoid reaching a false conclusion based on superficial information alone. The mere fact that some athletic programs generate enormous revenues and a high degree of public visibility should not be construed to mean that success in athletics yields higher rates or levels of philanthropic or charitable donations to colleges and universities. In point of fact, the results of studies examining the relationship between athletic programs and higher education fund raising over a 70-year span of time suggest that there is either no relationship or a very weak relationship at best between the two.

The remainder of this paper is organized into three sections. The first will highlight studies that have focused on this question, offering brief summaries of findings for each study. The second section will discuss problems associated with the existing studies and how this impacts the interpretation of the findings. The final section will offer observations about how this information relates to the broader discussion regarding compliance with Title IX in intercollegiate athletic programs.

Summary of Studies – Athletics and Its Impact on Giving to Higher Education

Marts (1934) – sought to understand if an emphasis on football with the goal of gaining national visibility resulted in a financial benefit for colleges and universities between the years 1921-1930. Marts studied 32 institutions in total, 16 of which had made a commitment to upgrading their football program while the remaining institutions were classified as part of a control group. Schools without an emphasis on football realized a 126 percent increase in their endowments while schools with an emphasis on football realized an increase of 105 percent. Marts did note that several of the schools that opted to build a powerhouse football team were experiencing financial conditions that he described as "pitiful" because of the investment needed in promoting football.

Cutlip (1965) – a noted researcher in the area of institutional fund raising, Cutlip examined the impact of athletic program success on endowments, enrollments, contributions, and reputations of schools. He found that these variables were unaffected or negatively affected by the success of athletic programs.

Spaeth & Greeley (1970) – concluded that contrary to previous researchers who found a negative impact between athletic success and alumni giving, winning football teams may prompt alumni to raise the level of their contributions. However, Spaeth and Greeley did not test their hypothesis empirically. Rather, they offered speculation that the emotional attachment of alumni to a winning football team would probably predispose them to give more to their alma mater.

Amdur (1971) – in a critique of the college sports establishment, Amdur wrote anecdotally about the ebb and flow of alumni contributions as they related to the fortunes of athletic teams, citing a decrease in contributions at the University of Georgia in the wake of mediocre football seasons, increases at the University of Missouri following winning football seasons, a modest decline in an otherwise decade of increasing alumni giving at Amherst in the two years when the college did not win the "Little Three" football crown, and a "dramatic jump" in alumni giving at Wilkes College in years when its football team's performance improved dramatically.

Springer (1974) – examined the impact of dropping football at 151 colleges between 1939 and 1974. Springer reported that officials involved in these decisions were originally concerned about the impact cuts would have on alumni giving. According to Springer, almost all the schools suffered no ill effects from cutting football and in some instances the cuts "had considerable positive results."

Budig (1976) – analyzing data on alumni giving for 79 colleges and universities during a four-year span of time during the 1960s and 1970s, Budig sought to determine whether total alumni giving was related to the performance records of football and (men's) basketball teams. Budig found that the "significant relationships between athletic success and alumni giving" were so "infrequent" and "random" that no systematic link between athletic success and alumni giving was found.

Sigelman & Carter (1979) – examining 138 Division I colleges and universities for the academic year 1975-1976, these researchers tested the validity of the idea that "alumni giving varies according to a school's success on the playing field." Using correlation and regression analysis, Sigelman and Carter related the alumni-giving change figures for a given year with three athletic success measures (basketball record, football record, bowl appearance). They reported no relationship between success or failure in football and basketball and increases and decreases in alumni giving.

Brooker & Klastoria (1981) – explored the relationship between the records of football and (men's) basketball teams of 58 major U.S. universities with average contributions from solicited alumni and the per capita gifts to the annual funds. Brooker and Klastoria concluded that team success did correlate highly with alumni generosity for schools within homogeneous groupings. However, they went on to equivocate that the relationship "depends on some institutional factors" and the nature of the institution (public or private). Alumni at private institutions, schools with a religious affiliation, and mid-sized public universities appeared more inclined to be positively affected by the success of athletic teams. In an analysis of all state universities in the sample, they found inconsistent results. They also noted that a major question remained to be answered, that being the cost-benefit relationship of athletics to the trends found. In effect,

even in circumstances where there may be a positive relationship between athletic success and alumni contributions, the financial benefit may not be worth the cost associated with fielding and promoting a winning team.

Coughlin & Erekson (1984) – focusing on the relationship between athletic success and contributions to athletic programs, Coughlin & Erekson conducted a cross-sectional study of 56 NCAA Division I institutions. Several measures of athletic success, including game attendance, post-season play, and winning percentage were identified as significant determinants of giving to athletic programs.

McCormick & Tinsley (1990) – applying a two-equation model to data obtained from Clemson University for a four-year period of time, the authors reported a connection between contributions to the athletic program and to the academic endowment. They identified the success of the football program as a determinant of the level of contributions made to the athletic department while athletic contributions are a determinant of alumni giving to the endowment. According to the authors, an estimated 10 percent increase in the level of donations to the athletic booster club was associated with a 5 percent increase in contributions to athletics.

Grimes & Chressanthis (1994) – empirically analyzed the effect of intercollegiate athletics on alumni contributions to the academic endowment using time series data over a 30-year span of time from what they described as a "representative" National Collegiate Athletic Association (NCAA) Division I university, that being Mississippi State University. Based on this case study, the authors concluded that alumni contributions were positively related to the overall winning percentage of the football, (men's) basketball, and baseball programs. Grimes and Chressanthis report the existence of a "spillover benefit" to the university because athletic success appears to influence the level of alumni giving to the academic side of the institution. Television exposure was identified as influencing donors positively, while NCAA sanctions for rules violations appear to have a negative effect on donors. The authors noted that the generalizability of their findings was limited because this was a case study.

Harrison, Mitchell, & Peterson (1995) – examined the alumni giving patterns of 18 colleges and universities. Criteria for selection included public/private, large/small, and research/teaching orientation. Whereas fraternity/sorority affiliations were associated positively with alumni giving, having an NCAA Division I athletic program had no significant effect.

Rhoads & Gerking (2000) – conducted an empirical examination of the links between athletics, academics, and educational contributions in 87 universities that sponsor Division I football and men's basketball teams (most members of the SEC, Big Ten, Atlantic Coast, Pacific 10, Big 12, and Western Athletic conferences were included as well as representatives from other conferences and major independents). Rhoads and Gerking concluded that total contributions are not affected by year-to-year changes in the success of athletic teams. Total contributions from alumni may be affected by the performance of athletic teams. Further, alumni seem to respond more positively to football bowl wins and negatively to NCAA probation. The estimated impact of athletic success, however, is relatively weak compared to the effect of student and faculty quality on alumni giving.

Debunking the Myth That Athletics Success Favorably Influences Alumni Giving

Well respected scholars (Frey, 1985; Gerdy, 2002; Zimbalist, 1999, 2000; Sack & Staurowsky, 1998; Shulman & Bowen, 2001; Sperber, 2000; Thelin, 1994) who have intensively studied

intercollegiate athletics and its relationship with higher education have examined this body of work in total and concluded that there is little if any empirical support for the notion that athletic success translates into increased levels of alumni support to institutions of higher learning. In 1985, James Frey, a sociologist from the University of Nevada-Los Vegas characterized this as the "winning-team" myth.

In offering possible explanations for the lack of a positive relationship between athletic success and general endowment funds, economist Andrew Zimbalist (1999) points out that "the main contributors who seem to respond to athletic prominence are boosters, not the typical alumnus or academic philanthropist" (p. 168). This reliance on contributors who do not have an academic interest in institutions of higher learning started in the first half of the twentieth century (roughly 1910-1946) when men's athletic programs received financial support through the development and emergence of booster organizations, which came to be called athletic associations. Historian and former chancellor at the College of William and Mary, John Thelin (1994) has described the booster phenomenon as "one of the most significant organizational developments during the period between the world wars" because the booster organization or athletic association was a "legal corporation that was a part of, but apart from, university structure" (p. 97).

The relative independence of athletic associations and other athletic fund raising groups on college campuses, separated as they are from institutional advancement offices, provides grounds to raise serious questions about the validity of the assertion that athletic success enhances the ability of institutions to raise money for general funds or endowments. Concerns regularly emerge surrounding the inability of institutions to control the behavior of overzealous boosters who act improperly by providing inappropriate benefits to athletes and who attempt to influence the establishment of academic and athletic priorities on their campuses.

Former assistant commissioner of the Southeastern Conference and legislative assistant at the NCAA, John Gerdy (2002), provides some insight into this mistaken notion that there is a positive link between the athletic department and the institution when it comes to matters of fund raising. He writes:

> "... many big-time athletic programs are run as independent, profit-driven, auxiliary enterprises. Despite the claim from athletic fund-raisers that they work closely with the institutional advancement office to raise funds for the university, such cooperation is usually superficial. The separation and mistrust that exists between most academic and athletic communities means that virtually all athletic department fund-raising efforts are directed at raising money specifically for sports, rather than for the institution generally...It is rare when an athletic department donates money to the institution because there is no excess revenue to donate." (pgs. 164-165).

Richard Conklin, a top administrator at the University of Notre Dame, has commented similarly about this separation. He observed, "We at Notre Dame have had extensive experience trying to turn athletic interests of 'subway alumni' [read booster] to academic development purposes—and we have had no success. There is no evidence that the typical, non-alumnus fan of Notre Dame has much interest in the educational mission." About the myth of athletics contributing to the financial welfare of the academic component of educational institutions, former President of Michigan State University John D. Biaggio stated the "myth of institutional dependency on

athletic revenues – therefore on athletic victories – needs to be aggressively refuted" (as quoted in Zimbalist, 2000).

If one comes to terms with the fact that athletic programs clearly fund raise for their own needs while providing essentially lip-service to the overall fund raising goals of colleges and universities, one can begin to understand why the notion of a "spillover benefit" from athletics has been questioned as often as it has. First, Andrew Zimbalist (2000) has estimated that "no more than a dozen" of the 300-plus schools in the NCAA Division I generate surplus funds. The average subsidy a Division I-A athletic department receives from the institutional general fund is nine percent, or roughly $1.3 million (Fulks, 2000). Thus, even if one were to concede that indirect benefits in the form of brand name recognition exist, any "spillover" goes back to most athletic programs anyway in the form of institutional subsidies.

Second, data that is often times interpreted to be evidence of a "spillover benefit" may actually reflect a temporary response to a winning team or more importantly, a factor that in reality undermines the ability of institutional fund raisers to do their jobs. Consider this data from Central Connecticut State University for the year 1999-2000. In the spring of 2000, Central Connecticut made its first appearance in the NCAA men's Division I tournament. The madness of March resulted in an 88 percent increase in donations to the athletic department and a 24 percent increase in alumni giving (Merritt, 2000). This data set, however, does not distinguish between giving to the athletic fund and giving to the general fund. Whereas there may in fact be occasional upsurges in giving based on the success of individual teams, the meaning of that increase needs to be considered within the context of the overall pattern of giving for an institution. Otherwise, such a report can be misleading by hiding the very real possibility that while donations to the athletic program went up, donations to the institution's general fund remained stable or declined during the same period of time.

In the absence of having full disclosure of the entire institutional fund-raising record with a complete breakdown of athletic and general fund donations, the assumed "spillover benefit" may in fact mask the "undermining effect" that occurs when athletic fund-raising creates a clear competing interest with academic and other educational priorities where limited financial resources exist.

Beyond the mechanics of financial accounting and interpretation of the data regarding athletic program success and institutional fund raising, there are problems associated with the assumptions that shape the discussion about athletic success and fund raising. The romantic image of undergraduates and alums cheering the team to victory and forming a bond with each other and their alma maters while watching football games has been an enduring one in the marketing of college life and intercollegiate athletics. Regardless of how valid the romantic image is, the question of whether alumni/nae support the current emphasis on sports in colleges and universities yields interesting results. In one of the most comprehensive surveys of college graduates ever done, which was distributed to 60,000 alumni/nae who entered college in the years 1951, 1976, and 1989 and produced a 75 percent rate of return, college graduates thought that there should be less emphasis on intercollegiate athletics (Shulman & Bowen, 2001). Of additional relevance to this discussion, Shulman and Bowen found that the general giving rates of athletes from what they called "high-profile" teams actually dropped substantially within class cohorts. Whereas 64 percent of athletes entering college in 1951 in the high profile sports (football, men's basketball) gave back to their institutions, that figure dropped to 39 percent in the class cohort for 1989. In effect, even those individuals participating in the programs that receive the most emphasis and experience the most success are less inclined to

give than they were 50 years ago. These findings lend further credibility to what the data on athletic success and institutional fund raising already shows.

Finally, the other major flaw in the studies that have been done on athletic success and institutional fund raising is the failure to include women in the analyses. All of the studies in the second section of this paper focused on what have historically been thought of as the "revenue-producing" sports (i.e., football and men's basketball). Recent work that has addressed women and athletic fund raising reveals that women's sports have the capacity to generate interest and revenue and that institutional fund raisers (whether located in the athletic department or advancement office) need to learn more about specific strategies for appealing to women graduates as legitimate donor constituencies (Curtis, 2000; Staurowsky, 1996; Verner, 1996). This work is part of the expanding base of information about women and philanthropy that is growing in the fields of education, politics, female-owned and operated businesses, and charitable community giving.

Conclusions

As Sigelman and Carter (1979) so astutely observed almost 25 years ago, "the lack of any relationship between success in intercollegiate athletics and increased alumni giving probably matters less than the fact that so many people believe that such a relationship exists" (p. 293). Former university president James Duderstadt's (2000) thoughts about the construction of athletic financing schemes are particularly illuminating in this regard. In his book, *Intercollegiate Athletics and the University: A University President's Perspective*, explains in detail how tenuous athletic budgets are. He points out that, "the financing of intercollegiate athletics is also complicated by the fact that while costs such as staff salaries, student-athlete financial aid, and facilities maintenance are usually fixed, revenues are highly variable. In fact, in a given year, only television revenue for regular events is predictable. All other revenue streams, such as gate receipts, bowl or NCAA tournament income, licensing revenue, and private gifts, are highly variable. While some revenues such as gate receipts can be accurately predicted, particularly when season ticket sales are significant, others such as licensing and private giving are quite volatile. Yet many athletic departments (including Michigan of late) build these speculative revenues into annual budgets that sometimes crash and burn in serious deficits when these revenues fail to materialize" (p. 128-129). He goes on to note that, "...this business philosophy would rapidly lead to bankruptcy in the corporate world." The parallel he draws between the corporate world and the institutional financing of some of the major athletic programs around the country is an apt one in light of recent revelations regarding the lack of fiscal accountability in the corporate world and the declining trust the American public has in the U.S. economy. Just as corporate executives at Enron, Worldcom, and Arthur Anderson failed to fully disclose the weaknesses in the financial structures of the businesses they represented, the perceived economic viability and profitability of men's revenue-generating athletic programs has fed from a well-spring of myth that has little foundation in fact.

To introduce the issue of athletic success and fund raising into a discussion about Title IX is counterproductive at several levels. Compliance with Title IX will not alter this picture one way or another, regardless of what various individuals may wish to assert. The historical record simply does not bear this out. Second, the fact that institutions claim that they do not have the finances to comply with the requirements of Title IX as stated reveals the essential falsity at the core of the assertion that big-time men's sports programs generate a "spillover effect" that benefits the institution at large. If this were the case, representatives of athletic programs would not then be claiming when the issue of Title IX compliance comes up that they cannot afford to sponsor

women's programs. Third, Title IX's focus should, and must, remain on the educational benefits to be derived from athletic participation in a non-sex discriminatory environment. Regardless of the financial arguments made by institutions, thirty years of financial planning ought to have positioned institutions to resolve any funding problems they had in meeting the needs of women students on their campuses. Claiming financial distress as the reason for non-compliance with Title IX at this late juncture is an admission that the legislation has been ignored for three decades.

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